No. 17503.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MEYER HARRIS COHEN, also known as MICHAEL "MICKEY" COHEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

I.
JURISDICTION.

Appellant was indicted by the federal Grand Jury in and for the Southern District of California on September 16, 1960 in thirteen counts for violations of 26 U. S. C. 7201, 26 U. S. C. 7206(4), and 18 U. S. C. 1001 [C. T. 2].[1]

Appellant was arraigned, pleaded not guilty, made numerous pre-trial motions, was tried by a jury, and convicted on eight counts on June 30, 1961. On July 1, 1961 he was sentenced to fifteen years' imprisonment and a $30,000 fine. Appellant made several post-trial motions. On July 20, 1961 appellant filed a Notice of Appeal from the judgment of conviction.

The United States District Court for the Southern District of California had jurisdiction of the cause of action under 18 U. S. C. 3231. This Court has jurisdiction under 28 U. S. C. 1291 and 1294(1).

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[1]C.T. refers to Clerk's Transcript.

II.
STATUTES INVOLVED.

The Indictment was brought under three different statutes which provide, in pertinent part, as follows:

18 U. S. C. 1001.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

26 U. S. C. 7201.

"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution."

26 U. S. C. 7206(4).

"Any person who—

* * * * *

"Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which

evade or defeat the assessment or collection of any tax imposed by this title; . . .

* * * * *

"shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution."

levy is authorized by section 6331, with intent to

III.
STATEMENT OF THE CASE.

On September 16, 1960 appellant was indicted in thirteen counts [C. T. 2]; he was arrested the same day and moved for a reduction in bail in the United States District Court, which was granted [C. T. 16].

Prior to trial, appellant was arraigned, pleaded not guilty, and there were many motions, the rulings on which are not specifically contested by appellant on this appeal, including the following motions: to leave the jurisdiction, to remain outside of the jurisdiction, to increase bail, to reduce bail, for a bill of particulars, to dismiss the indictment, to suppress evidence, and for continuances. Also prior to trial, there were hearings on some of the motions and pre-trial conferences [C. T. 2-294].

On May 2, 1961 jury trial commenced before United States District Judge George H. Boldt. On June 28, 1961 the case was given to the jury, and two days later the jury returned its verdict acquitting appellant on five counts and convicting appellant on eight counts [C. T. 592].

On July 1, 1961 Judge Boldt sentenced appellant [C. T. 593-5].

On July 5, 1961 appellant moved for a new trial, which was denied by Judge Boldt on July 20, 1961;

immediately thereafter appellant filed his notice of appeal.

On October 2, 1961 appellee received appellant's brief in which there are eighteen errors specified and nine arguments.

Parts of this case have been upon appeal to this Court on two prior occasions, once before trial and once after conviction.

IV.
STATEMENT OF FACTS.

A. Introduction.

The trial in this case lasted some forty-two days. Some 190 witnesses testified; several thousand documents were introduced into evidence; and the reporter's transcript of just the trial is nearly 8000 pages in length. Appellant in his opening brief does not provide this Court with a statement of facts, but rather says, at page 5: "The numerous and extensive transactions touched upon during the trial preclude a detailed statement of the case"; and he then gives, in less than three pages, a "broad general outline" of "those facts and circumstances necessary to acquaint this Court with the issues pertinent to this appeal." After this introduction appellant then very briefly sketches some facts pertaining to Count One (appellant was acquitted on this count); then he briefly outlines several factors relating to Counts Two and Three; he then outlines Counts Five through Eight in two sentences, and Counts Nine through Eleven in another sentence; no factual reference is made to Counts Four, Twelve or Thirteen. Appellant argues the sufficiency of the evidence on some counts, and therein he also briefly summarizes some of the evidence.

In view of the foregoing, appellee does not feel that this Court, or any court, expects or requires appellee

to set forth an exhaustive review of the evidence. However, appellee will attempt to set forth a more comprehensive analysis of the facts pertaining to each count of the Indictment.

This Court may find it helpful in reviewing the reporter's transcript to utilize the index of exhibits received in evidence—this index itself was made an exhibit [Court's Ex. 7]. Prior to trial appellee started an exhibit register in which each exhibit is numbered, briefly described, and the foundation witness is identified. This register was always in advance of the trial proceedings, and copies of this register were supplied by appellee to the trial court, appellant's counsel, the court clerk, and the court reporter. The court clerk's copy of this register is Exhibit 949 not in evidence. This register lists all the exhibits numerically, including those that were marked for identification and never received into evidence. This Court may also obtain a general outline of the case from counsel's closing arguments [R. T. 7609-7969].[2]

B. Count One.

Count One of the Indictment charges that on July 15, 1957, appellant attempted to evade and defeat his and his wife's income taxes for 1956 by filing a false and fraudulent joint income tax return in which their income was listed as $1200.00 and the tax due thereon was none; whereas, their income was $3750.00 and the tax due thereon was $440.00.

Appellant was found not guilty on this count.

In early 1956 appellant went to work for Michael's Greenhouses, Inc., a newly organized business belonging to Ruth Fisher Benson and her brother Harmon

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[2]R.T. refers to Reporter's Transcript.

Eldridge [R. T. 245; 256]. This business was sold to Lee and Elinore Churchin in July of 1956 for $15,000 [R. T. 271; 407], and, at appellant's request, his sister, Lillian Weiner, took over the business in the fall of 1956 and operated it until August 29, 1957 when she sold it for $15,000.00 to Joel K. Hamamoto [R. T. 953; 956]. During the period of his employment by the Greenhouse business appellant was the beneficiary of some $53,225.40 which was paid out by the Greenhouse either to him or on his behalf [Ex. 947], excluding any salary or commissions he received.

In 1956 appellant received, at one time, six $200.00 salary checks minus deductions, and this constitutes the $1200.00 appellant reported on his 1956 tax return [Exs. 1, 130]. There were three additional checks received and cashed by appellant in 1956; all three check stubs are in evidence and one check is in evidence [Ex. 131, stubs 278, 288; 134-E; 138-G]; two of these check stubs—one for $50.00 and one for $2000.00—are labeled "Commissions" and the third check and stub contain no notations but the workpapers of the Greenhouse's accountant, Samuel Chilkov [Ex. 158-J not in evidence], show that it was originally a commission item which was transferred to the loan payable account by a journal entry [R. T. 6440-6452].

Although the Greenhouse business was always operated at a loss, some hundred thousand dollars was funneled through its bank accounts prior to September of 1957. Some of the accounting books of the business are in evidence (others were never located), and many bank records, check books and statements were received in evidence. Some of these books and records are also pertinent in tracing money that appellant received that was labeled as "loans" or that constituted "life story receipts."

C. Count Two.

Count Two of the Indictment charges that on April 15, 1958 appellant attempted to evade and defeat his and his wife's income taxes for 1957 by filing a false and fraudulent joint income tax return in which their income was listed as $1272.84 and the tax due thereon was none; whereas, their income was $44,918.14 and the tax due thereon was $16,042.16.

Appellant was found guilty on this count.

In the year 1957 appellant and his wife reported on their joint tax return $1272.84 as income [Ex. 2]. It was stipulated that this sum was earned by La Vonne Cohen, appellant's wife, from the sale of gift items [Court's Ex. 1]. Appellant, in 1957, received an additional $46,645.30, which was not reported, from other sources which were categorized [Ex. 943-C] as follows:

1. $3,350.00 — promotion income;
2. $1,795.30 — interest income;
3. $3,000.00 — vending machines;
4. $6,000.00 — other income;
5. $32,500.00 — life story income.

Total — $46,645.30

1. Promotion Income.

W. C. Jones met appellant in the late 1930's while attending prize fights [R. T. 754]. In 1952 Mr. Jones was converted to Christianity and from that day on he has been extremely active as an evangelist, and has been financially successful in his business [R. T. 761]. Appellant was released from federal prison in October of 1955, and shortly thereafter Mr. Jones, along with James A. Vaus, Jr., another evangelist and an ordained minister, met with appellant in order to encourage him

spiritually [R. T. 761]. At the conclusion of this meeting Mr. Jones gave appellant $85.00 [R. T. 764]. After this meeting, appellant, who had indicated that he was broke [R. T. 704], received financial assistance from the Jim Vaus Evangelistic Association, a California nonprofit corporation; he received $2494.12 up to and including July 2, 1956, including about $1,000.00 in cash, over $400.00 paid on telephone bills, $270.00 on apartment rent, and payment of a doctor bill. Appellant also received personal gifts like stationery, the free use of an office and the free use of Mr. Vaus' personal car, including the use of a credit card [R. T. 704-712; Exs. 259-269].

Mr. Vaus also arranged for appellant to meet with Vernon Blythe, a well-to-do business man interested in evangelical activities. In March of 1956 appellant asked for and received $3000.00 from Blythe, and in May of 1956 he received another $3000.00. Both of these transactions were set up as loans complete with promissory notes signed by appellant and, though due and payable in 1956, they were never repaid by appellant [R. T. 713-717; 2550-2563; Exs. 511-514].

In 1957 appellant again asked Mr. Blythe for financial assistance and was told "money is not your problem now, or has it ever been your problem; I really honestly believe that there is only one thing for you to do and that is to turn your life over to God and let Him intervene" [R. T. 2566]. Blythe refused to give further financial assistance to appellant.

During the period from the end of 1955 until December 31, 1956 when appellant was receiving financial help from these men on the basis that appellant was broke, appellant also received in excess of $25,000 in currency from other sources [Ex. 945].

In January of 1957 appellant contacted Mr. Jones whom he had not seen in over a year and requested a meeting which took place at a restaurant in Los Angeles and lasted some five hours, during which appellant's need for money and spiritual assistance was discussed [R. T. 763]. When they left the restaurant they went to appellant's apartment, prayed together for twenty minutes, then knelt and appellant verbally accepted Jesus Christ and turned his life over to Christ [R. T. 765]. Mr. Jones then told appellant, "You are my Christian brother now, and I want to know your needs" as we are to share our needs [R. T. 766].

Appellant's needs were financial. The month after, February 1957, appellant asked Mr. Jones to call his Christian friends to raise $10,000 as appellant was involved in a legal situation. Mr. Jones, to show appellant that he was on appellant's side, paid $1000.00 to appellant's then attorney, Rexford Eagan [R. T. 775, 776; Ex. 289]. Also, in February 1957 Mr. Jones gave appellant $300 in cash [R. T. 758, 776, Ex. 290]; and in March of 1957 Mr. Jones gave appellant $250.00 [R. T. 759, 777; Ex. 292]. On April 1, 1957 Mr. Jones paid Attorney Charles Hollopeter $299.77 on behalf of and at the request of appellant [R. T. 755, 759, 768; Exs. 281, 293]. All of the expenditures of Mr. Jones on behalf of appellant were gifts; they were never thought of by Jones as loans; there were no notes [R. T. 767, 768]. During this same three months of 1957 appellant also received in excess of $20,000 in currency from other sources [Ex. 945].

In April of 1957 Mr. Jones and Mr. Vaus were concerned with the lack of spiritual growth in appellant, and knowing of appellant's affection for Billy Graham they arranged to send appellant from Los Angeles, California, to New York, New York for a two-day trip to

meet privately with Billy Graham for prayers, advice and encouragement as to how to arrange the affairs of his life [R. T. 729, 730, 769]. In a matter of hours after the decision to have this meeting in New York, appellant was taken to the airport, given a first-class round trip ticket from Los Angeles to New York and given $135.00 pocket money [R. T. 730, 731, 770, 771]. Arrangements were made to have appellant met at the New York airport; appellant did not meet them but rather went to the Waldorf-Astoria Hotel, took a suite there, and called a press conference [R. T. 732, 733, 771]. The press quoted appellant as saying he was considering Christianity, and, after seeing this, Mr. Jones telephoned appellant and told him, "we didn't send you back to consider a decision, we sent you back to cement one that you had already made" [R. T. 771]. Mr. Jones flew to New York that same night, met appellant at the Waldorf-Astoria, berated him for abusing the intent and purpose of the trip, and, after appellant showed him telegrams he had received from Jewish friends, appellant asked him to send $1000 to Lillian Weiner, appellant's sister, as proof to her that appellant's Christian friends will help him and not let him down the minute he gets behind the eightball [R. T. 773-774]. Mr. Jones immediately sent the $1000.00 [R. T. 774; Ex. 294].

Mr. Jones also consented to pay appellant's hotel bill for the one day, and left his credit card with the cashier to pay for the one day. Appellant stayed for nearly a week, ran up a bill of $507.08 which was sent to Mr. Jones and paid for by him [R. T. 775; Ex. 296].

Appellant was in Chicago, Illinois at the Knickerbocker Hotel from April 28, 1957 to May 2, 1957 with five other men, most of whom appellant had invited as his guests to attend a championship fight; appellant paid his hotel bill and that of four of the guests in the total amount of $514.15, and he also paid $530.86 for

the air transportation for this trip with Greenhouse checks [Ex. 144-F, 148-E, Court Ex. 3; R. T. 847-849].

The day after appellant returned from Chicago he telephoned Mr. Jones and said, "Bill if you will just help me out this once more, this is all I need, I have some friends in Chicago that will help me financially and I think that this will really do it, and all I need is plane fare back to Chicago" [R. T. 778]. On that same day, May 3, 1957, Mr. Jones gave appellant $300.00 [R. T. 778; Ex. 297], and that was the last financial transaction between appellant and Mr. Jones [R. T. 778].

Appellant's transportation to Chicago in May of 1957 was paid for by the producers of the Mike Wallace television program [Exs. 298-306]. Also, on that same date, May 3, 1957, appellant cashed $7,345.30 worth of United States Savings Bonds [R. T. 788; Exs. 47; 176], and just two days before, on May 1, 1957, appellant cashed a $3,000.00 check [Exs. 239, 945].

Gus the Great is a book written by Thomas Duncan, and the motion picture rights are held by a studio [R. T. 945].

Robert Goodstein, formerly a property man at a major motion picture studio in Los Angeles, wanted to put a deal together to make a picture based on *Gus the Great,* starring Jackie Gleason.

Barney Peller, a long-time acquaintance of appellant's from Cincinnati, Ohio, a promoter and salesman of home improvements and a second cousin to Robert Goodstein, introduced Goodstein to appellant in Los Angeles during March 1957. Goodstein told appellant about his ideas concerning *Gus the Great;* appellant indicated he knew Jackie Gleason and could see if he was interested in the starring role [R. T. 946].

When appellant was in New York at the Waldorf-Astoria at Mr. Jones' expense, he telephoned Barney Peller who was in Cincinnati, Ohio, and told him he was working on *Gus the Great* and making progress, but that expenses at the Waldorf were quite high so would Barney send him some money [R. T. 877]. Peller sent him $500 labeled "for Gleason negotiations" [R. T. 878; Ex. 78]. The next day appellant called Peller again, and again Peller responded with $500.00 labeled "Gleason negotiations" [R. T. 880; Ex. 79].

While in New York appellant did talk to Jackie Gleason's manager, George "Bullets" Durgom [R. T. 3590]; he did not talk or meet with Jackie Gleason [R. T. 3605].

All of appellant's transportation expenses from Los Angeles to New York and back, plus his hotel bill (including $63.60 for candy [R. T. 756]), plus $135.00 spending money, were taken care of by Mr. Jones, *supra.* Appellant received the $1000.00 from Barney Peller for "Gleason negotiations" on April 2, 1957, and on April 6, 1957 while in New York at the expense of W. C. Jones, *supra.*

When appellant returned to Los Angeles he contacted Robert Goodstein and asked him to pay one-third of the $3000.00 cost of the entire trip from Los Angeles to New York and back which appellant said would be about $1000.00 [R. T. 949]. Mr. Goodstein did not have the $1000.00 and did not pay it [R. T. 949].

The Government charged that the $1000.00 received from Peller was unreported income [Ex. 943-C].

When appellant left the Waldorf-Astoria in New York and was on his way back to Los Angeles he stopped in Cincinnati, Ohio, where Barney Peller introduced him to Charles Schneider, a tree surgeon, and his pre-teen age daughter Janet, who was desirous of

becoming a singer with Barney Peller as her agent [R. T. 823, 891]. Appellant contacted Jerry Lewis and arranged for Janet to sing as a guest on the Lewis stage show then appearing in Cincinnati, Ohio. Appellant offered his services in promoting the career of young Janet, and on April 10, 1957 Charles Schneider handed appellant three checks: one for $2500.00, one for $2000.00, and one for $350.00 [R. T. 827, 830; Exs. 271, 272, 273]. Mr. Schneider also paid appellant's hotel bill while he was in Cincinnati. The $2500.00 check was for appellant's "life story," discussed below. The other two checks were for promotion of Janet's career as a singer [R. T. 830, 832].

In the summer of 1957 Barney Peller and the Schneiders drove to Los Angeles and remained for several weeks at their own expense, during which time appellant did take them out on numerous occasions [R. T. 837, 838]. Before making the trip, Barney Peller sent appellant $500.00 obtained from Charles Schneider [R. T. 842, 843; Ex. 80].

Appellant did incur some expenses while the entourage was in Los Angeles, but the amount and nature of them are unknown [R. T. 852]. Appellant received $2850.00 from Mr. Schneider to promote Janet's career, and $2350 of it was alleged to be income to appellant [Ex. 943-C].

2. Interest Income.

On May 3, 1957 appellant cashed in United States Savings Bonds purchased in the early 1940's and received $7345.30; these bonds cost $5550.00; the difference of $1795.30 was interest, and as such income of appellant [R. T. 789; Exs. 176, 943-C].

During the trial it was conceded by appellant that the $1795.30 interest income should have been reported on the tax return for 1957 [R. T. 7779], and it was contended that appellant had forgotten he had them as

they were in the possession of Pauline Duitz, his sister [R. T. 7075-7078], who in October of 1955 helped appellant pay his $10,000 fine [Ex. 587].

Two people testified about appellant's possession of these bonds prior to their encashment: James Vaus was told by appellant in late 1955 that appellant had some bonds but could not cash them because of the Government [R. T. 704]; and Robert Cowan, who in December of 1955 transferred $500 to appellant and has not been repaid, saw bonds in appellant's possession at that time [R. T. 748-752].

These bonds were pertinent to Count Four and to Counts Twelve and Thirteen. The Government charged that the $1795.30 was unreported income [Ex. 943-C].

3. Vending Machines.

In the fall of 1957 a competitive war in the placing of coin-operated cigarette vending machines broke out between two rival companies in Los Angeles: Coast Cigarette Vending Company and Rowe Service Company [R. T. 4203].

Fred Sica, a long-time friend of appellant, offered his assistance through Wm. Breen, a salesman for Coast, to Meyer Carr, president of Coast; and through the same channels was turned down [R. T. 4193-4196].

George Seedman, the president of Rowe, received the unsolicited assistance of Thomas A. Vaughn, the owner-operator of an allied cigarette vending machine company in New Orleans, Louisiana, the expenses for which Seedman eventually paid [Exs. 580-586]. Vaughn died before the trial and was unavailable as a witness [R. T. 4213]. Vaughn, Lou Angello, an aide of Vaughn's, Sica and appellant had a meeting at Harry Rudolph "Babe" McCoy's apartment [R. T. 5847-5848].

Fred Otash, a private detective, was hired by Coast to secure evidence as to the tactics and pressures being utilized by Rowe to obtain locations for machines.

Otash and his operatives made secret tape recordings of such activities. Otash by chance met Sica and appellant and discussed their relative roles in the vending machine war, at which time Otash told appellant he was working for Coast and appellant told Otash he was representing Rowe and was "trying to settle the dispute between Rowe and Coast." Otash then told appellant about the existence and contents of his secret tapes, which prompted appellant to ask if these tapes could be played for an official of Rowe. The following night at 3:00 a.m. Otash, appellant and Seedman met at Otash's office and played these tapes, at which time appellant cautioned Seedman, "You are getting yourself involved in a lot of trouble." Appellant told Otash that he would see that Otash was taken care of for helping him; and thereafter, Otash met appellant and Vaughn at appellant's request, at which time appellant told Vaughn, "I owe Otash some money, he has been very helpful to us; give me $500." Vaughn handed appellant $500.00 and appellant handed the money to Otash [R. T. 5837-5843]. Seedman reimbursed Vaughn the $500.00 [Ex. 581].

On cross-examination of Otash, appellant was referred to as an intermediary by appellant's counsel, and Otash called appellant "an arbitrator" [R. T. 5844].

On November 27, 1957 Seedman cashed a $5000.00 check, placed the cash in a plain envelope, gave the envelope to Vaughn, accompanied Vaughn to a prearranged luncheon meeting with Sica and appellant, saw Vaughn tender the envelope to appellant, and saw appellant pass the envelope to Sica while saying, "This money belongs to Fred Sica" [R. T. 5758-5762, 5767-5768; Ex. 580].

On December 11, 1957 appellant's intermediary obtained from Vaughn two checks payable to appellant and totaling $3000.00; each of these checks bore the notation "loan"; and appellant cashed both checks [R.

T. 3534-3535; Exs. 597, 598]. Vaughn subsequently billed Seedman for the $3000.00, and Seedman paid Vaughn this $3000.00 at the same time he paid for Vaughn's other expenses in December 1957 [Exs. 582-585].

Immediately after these financial transactions, the vending machine war ended [R. T. 5841]. The Government charged that the $3000.00 was unreported income [Ex. 943-C].

4. Other Income.

The relationship between appellant and W. C. Jones is set forth above. As was related above, appellant requested $10,000 from Jones in February of 1957 for legal expenses, and Jones transmitted his check for $1000.00 to Rexford Eagan, appellant's attorney at that time [Ex. 289]. Although appellant represented on February 20, 1957 that he needed money to pay Rexford Eagan, the facts were that the week before, February 13, 1957, appellant had paid Eagan $2500 in cash, which was $500 more than the total fee requested by Eagan (appellant at the time he paid the $2500 expressed the thought that Eagan had not charged him enough) [R. T. 775, 776; 813-816; Ex. 629]. Appellant asked Eagan to substitute Jones' $1000.00 check payable to Eagan for $1000.00 cash of the $2500.00 cash appellant had already paid; this was agreeable to Eagan; so Eagan went to the bank with appellant, endorsed and cashed Jones' check, and turned the $1000.00 over to appellant. Jones was unaware of appellant's receipt of the cash proceeds of his check, and Jones was never repaid the $1000.00 [R. T. 775, 776, 815].

The Government charged that the $1000.00 was unreported income [Ex. 943-C].

Aubrey Stemler had numerous financial transactions with appellant, and they fall into three categories (1)

three loans totaling $12,500.00, which were repaid [Exs. 238, 243, 244, 246-249]; (2) "life story" transactions totaling $10,000.00 [Exs. 239-242, 251], see below; (3) a $5000.00 "sales tax" transaction [Ex. 245]. This final $5000.00 transaction is the one under consideration at this stage. This was the last transaction between appellant and Stemler and may be described as follows.

On the night of September 15, 1957 appellant sent Stemler a birthday gift (it was two days before his birthday) by a messenger accompanied by a letter [R. T. 1373-1375; Ex. 252]. The next day appellant went to Stemler's office and said that:

> "he had a deal to sell his business, the greenhouse business, and it was then in escrow, and he had some accumulated unpaid State sales taxes and some labor bills that had to be paid to clear the escrow to make it so he could sell the business." [R. T. 1375].

Appellant asked for $5000.00; Stemler told him he needed the money in his own business; appellant then said, "I will have the money back in five or six days at the most" [R. T. 1375, 1376]; whereupon, Stemler gave appellant a $5000.00 check to go into escrow [R. T. 1376; Ex. 245]. Within the hour Stemler's bank called and obtained authorization to cash the check for appellant. Immediately thereafter, appellant called Stemler and explained: "he cashed the check because it would be easier for him to clear the escrow using cash than it would be to have the check held for clearance"; and then appellant asked, "Can I get 15 more?" [R. T. 1376, 1377]. Stemler refused to give appellant any more [R. T. 1377].

The Greenhouse was in fact sold by appellant's sister to Joel Hamamoto on August 29, 1957, and there was an escrow involved in the sale. This escrow did not

require the seller to put in any money and none was in fact put in by the seller [R. T. 742; Ex. 179]. The California State Sales Tax Returns for the Greenhouse for the preceding eighteen months show that the sales tax for each quarter up to June 30, 1957 had been timely paid, and as of the time of the sale a closing return showing that as of August 31, 1957 the business was closed out and $48.48 was the total amount of tax due and owing which was deducted from a $50.00 cash deposit [Ex. 88A-F]. There were no known unpaid labor bills, and none were paid through the escrow [Ex. 179].

In the four months following this $5000.00 transaction Stemler tried many times to get his money back, but to no avail; he never has been repaid any of this money [R. T. 1377, 1378].

The Government charged that the $5000.00 was unreported income [Ex. 943-C].

5. Life Story Income.

In 1957 appellant received a total of $32,500.00 which the Government charged as unreported income from transactions involving the proposed dramatic reproduction of appellant's life story, as follows:

Bernard Koomer	$15,000.00
Aubrey V. Stemler	10,000.00
Leonard Krause	5,000.00
Charles Schneider	2,500.00
	$32,500.00 Total

Inasmuch as the entire amount of unreported income for 1958 as charged in Count Three was received from similar transactions, and in one instance from one of the same individuals involved in Count Two, this type of income will be set forth under Count Three.

D. Count Three.

Count Three of the Indictment charges that on July 15, 1959 appellant attempted to evade and defeat his income tax for 1958 by filing a false and fraudulent income tax return in which his income was listed as none and the tax due thereon was none; whereas, his income was $33,350.00 and the tax due thereon was $14,305.00.

Appellant was found guilty on this count.

In 1958 appellant received a total of $56,200.00 from transactions involving the proposed dramatic reproduction of appellant's life story that was involved in the Government's charge of unreported income, as follows:

Leonard Krause	$20,000.00
Louis Leitner	9,750.00
Max Feigenbaum	18,950.00
Joseph Bishop	7,500.00
	$56,200.00

As noted above, all the "life story" income and transactions of appellant will be discussed here for the sake of comprehension and brevity.

1. Owners, Authors and Producers.

The dramatic reproduction of appellant's life story begins with Henry Guttman, an interior decorator, restaurateur and professional actor. Guttman met appellant around 1947 and for the next several years had some business transactions with him [R. T. 2710]. In early 1951 Guttman loaned appellant $2,000.00 pending the sale of appellant's bullet-proof Cadillac; the vehicle was sold, but Guttman didn't get his money [R. T. 2713, 2714]. On April 13, 1951 appellant granted Guttman a 90-day option to "dispose of the story of my life for motion picture, theater, television, radio, book form or any periodical rights," for which appellant

was to receive "50 percent of any amount (Guttman) will receive from any of the above royalties or direct sales" [R. T. 2763-2765; Ex. D].

On June 14, 1951 (during appellant's prior income tax trial) appellant was paid $1500.00 by Guttman as consideration for a contract signed that same day by both Guttman and appellant in the presence of their respective attorneys [R. T. 2715-2717; Ex. 182]. By this contract appellant sold his life story to Guttman. The contract specifically provides:

> "1. The Seller [appellant] hereby gives, grants, bargains, sells, assigns, transfers and sets over forever to the Purchaser [Guttman] the absolute and unqualified rights to the story of his life, in whole or in part, in whatever manner said Purchaser may desire, including but not limited to the right to make and/or cause to be made literary, dramatic, speaking stage, motion picture, photoplay, television, radio and/or other adaptations of every kind and character of said story of his life or any part thereof" [R. T. 2757].

The contract also provides: That appellant is to assist in the preparation and writing of the life story; that each will get 50 percent of all moneys received; that appellant will repay Guttman for all advances from his share; that Guttman will pay costs from his share; and that Guttman has the right to assign this contract in whole or in part to anyone [Ex. 182].

On the same date, June 14, 1951, Guttman contracted with Irwin Gielgud, a writer, to write a movie version of appellant's life story, for which Guttman paid $1,000.00 and received a script entitled "Underworld Uncensored, or City in Chains" [R. T. 2712, 2737, 2738; Exs. 183, 615].

On June 20, 1951 appellant was convicted and remanded into the custody of the United States Marshal

(the prior trial), and did not get out of custody until October 9, 1955 [C. T. 519]. While appellant was in custody, Guttman advanced approximately $5,000.00 to appellant and appellant's wife, and for six or seven months in 1956, after appellant was released and was on parole, Guttman advanced appellant $100.00 per month [R. T. 2717, 2718, 2720-2723, 2732]. Guttman advanced appellant a total of $9,000.00 on the basis of this contract [R. T. 2731, 2736].

Guttman tried many times to sell appellant's life story, but in vain; he never realized any money from it [R. T. 2719, 2749].

The contract between appellant and Guttman is still in full force and effect [R. T. 2724]; therefore, since 1951 appellant had no right, title or interest in his life story, but rather Guttman from that date on owns appellant's life story.

James A. Vaus, Jr. (the evangelist referred to above), met appellant around 1946 [R. T. 692], and ten years later he entered into a contract whereby he purchased appellant's life story [Ex. 255]. Vaus had personal experience in the field of exploitation of a life story as his own life story was published in a book written by him called "Why I Quit Syndicated Crime," which later was made into a motion picture; and Vaus and his assigns realized less than $1,000 from the sale of the book and "not one penny" from the motion picture adaptation of the book [R. T. 692-695].

When appellant was paroled in October 1955, Vaus personally and through his charitable organizations began to render financial assistance to him which continued until April 16, 1957 when Vaus in a letter told appellant that he was through helping him because of the deceit of appellant concerning the trip to New York to privately confer with Billy Graham [Ex. 270]. The financial assistance given to appellant was known and

understood by both parties to be "an outright gift" [R. T. 712].

In the end of 1955 Vaus encouraged appellant to record some of the incidents of his (appellant's) life for publication and if appellant could conclude such a record with a good ending it would make excellent material for a book or magazine article or motion picture [R. T. 718]. To further this thought, Vaus provided appellant with free secretarial assistance, and appellant began recording some incidents of his life [R. T. 718-721]. The final result of appellant's labors in this direction was a manuscript of approximately 100 pages in length [Ex. 254].

Midway through the work on this manuscript, on March 15, 1956, Vaus and appellant entered into a contract whereby appellant, in essence, sold his entire life story to Vaus [R. T. 721-723; Ex. 255]. This contract in part provides:

> "4. The owner [appellant] warrants and represents that the owner is the sole owner of all the rights, licenses, privileges and property herein conveyed and the unlimited world-wide motion picture rights in such work and has full and sole right and authority to convey said rights herein granted. . . . That no part of the motion picture rights to such work, or any of the other rights, licenses, privileges or property herein conveyed has in any way been encumbered, conveyed, granted, or otherwise disposed of and the same are free and clear of any liens or claims whatsoever in favor of any part whomsoever and said rights, and the full right to exercise the same, have not been impaired; . . ."
>
> "The foregoing warranties and representations are made by the owner to induce the purchaser to

execute this agreement, and the owner acknowledges and concedes that the purchaser has executed this agreement in reliance thereon." [Ex. 255, pp. 3, 4.]

Vaus never heard of Guttman, and knew nothing of Guttman's contract with appellant; yet, at the very time appellant signed the Vaus contract he was receiving $100.00 each month from Guttman as an advance from Guttman to be applied to Guttman's life story contract with appellant [R. T. 723, 2734]. Guttman never heard of Vaus either [R. T. 2724].

On September 8, 1956 Vaus and appellant executed a "Mutual Release in Full," whereby their contract of March 15, 1956 was nullified [R. T. 724-726; Ex. 258].

Larry Harmon, a man with 25 years' experience in the entertainment industry, came in contact with appellant's life story through Eleanor Churchin in mid-1956; and, although he had never produced a motion picture, he became interested in producing a picture based on appellant's life story [R. T. 6373-6375]. Harmon tried to arrange: a contract with appellant, the financing of the picture, a financial settlement of appellant's back taxes with the Government, and the selection of technical personnel for the picture [R. T. 6375]. Harmon was unsuccessful in all of his endeavors in this regard [R. T. 6375-6413]. Harmon and appellant did meet with Internal Revenue Service officials in mid-1956 to try to arrange a means to produce the picture that would be a satisfactory method of paying appellant's back taxes; the Government personnel were ready and willing to proceed with some equitable arrangement [R. T. 6377-6381, 6397-6399]. Harmon never had a budget, a script (other than Exhibit 254), actors, nor a written contract; all he had was an idea [R. T. 6381-6383].

On direct examination Harmon testified that he had discussions with appellant relating to a contract between them to produce the motion picture and, based on these conversations, Harmon had a contract drawn up and submitted it to appellant; it was never executed or returned, and Harmon could not locate his copy of this proposed contract [R. T. 6375, 6382, 6383]. On cross-examination Harmon's proposed contract was produced [R. T. 6393; Ex. M]. This proposed contract provides in part:

> "Whereas [appellant], is the sole owner of all rights in and to any story or stories heretofore written or any story or stories which may hereafter be written based upon the life of said [appellant] . . .
>
> "[Appellant] represents and warrants to Harmon that (a) [appellant] has full warrant and authority to grant the right herein conveyed and such rights have in no way been conveyed, granted, mortgaged or encumbered or otherwise disposed of to or in favor of any third party.
>
> * * *
>
> "No motion picture has been made based upon the story or any part thereof, no right, license, or privilege so to do has heretofore been granted to anyone. Neither the story nor any play or dramatic adaptation based upon it or any part of it has been produced . . . and no rights, license, or privilege so to do has heretofore been granted to anyone" [R. T. 6401, 6402; Ex. M].

Harmon testified that clauses such as those quoted above were discussed with appellant, and were never contradicted or changed [R. T. 6402, 6403, 6410-6412]. Harmon did not know of any other interests in appellant's life story (other than Vaus' interest which he

knew was released); and Harmon did not know of Guttman (who was still advancing appellant $100.00 per month when Harmon became involved in appellant's life story [R. T. 6384-6387].

Ben Hecht, an author, who had met appellant in the late 1940's, was given, in mid-1957, a copy of the manuscript prepared by appellant with the aid of Vaus [Ex. 254] to read. He read it, met with appellant, and it was decided that Hecht would write a book based upon appellant's life story, and any proceeds realized from such a book would be split 50-50 [R. T. 2300-2305]. Hecht received a $2,500.00 advance from his publisher to write this book, and about a year later he returned the advance when the *Saturday Evening Post* published a series of four articles about appellant (with appellant's cooperation) [R. T. 2317-2319]. When Hecht commenced upon this project he had no knowledge of anyone else having any type of interest in appellant's life story, nor did he know that appellant had already raised money on his life story and continued to raise money on this project [R. T. 2310].

In mid-1958 Dean Jennings, the author of the series on appellant that appeared in the fall of 1958 in the *Saturday Evening Post,* conferred with appellant and also conferred with Hecht, and Hecht first became aware of appellant's activities in raising funds based upon the life story [R. T. 2335-2337]. Hecht confronted appellant with this fact:

> "I said to Mr. Cohen that Jennings had called up, and that Jennings was no friend of his, and that he had got me angry because he said to me that Mr. Cohen was out selling stocks, or bonds, or equities in this contract with the monies, and I said it couldn't be true, not that I couldn't imagine Mr. Cohen doing something like that, but I couldn't imagine anybody being stupid enough to

buy an equity in a non-existent, non-extant piece of work. I didn't know what kind of people would buy that. They had no contracts with anyone, they had no manuscript, they had no script, and I didn't believe it was true. This I told to Mr. Cohen.

Q. (By the prosecutor) What did Mr. Cohen say when you told that to him? A. (By Hecht) Nothing on that subject.

Q. Nothing? A. No.

Q. Did he admit or deny that he had received any money or having any connection with his life story? A. I didn't ask him the question. I didn't ask him from a questioning point of view. I just told him these things to wait to see what he would say. He didn't admit or deny, just went on talking about Jennings. May I say that I understood what the silence was." [R. T. 2336-2337].

Hecht, who by his own admissions is not a rapid writer, eventually wrote 85 typewritten pages [Ex. 433], and incorporated therein, word for word, are at least 25 pages of the manuscript [Ex. 254] that Hecht was given in the beginning [R. T. 2312-2315]. According to Hecht's testimony in May of 1961, the 85 pages (which is his total output on this book) were "with lots of luck and solvency on (his) part," a year to a year and one-half from publication [R. T. 2315]. Hecht has never realized any money on this project [R. T. 2338].

Dean Jennings, an author who has specialized in writing other people's life stories conferred with appellant in December of 1957 at which time they had the following conversation:

"I asked him if he was committed to anyone for his first person story, which is what I wanted at

that time. He said that he had been talking to another newspaperman about it and he gave me a figure that he said the other newspaperman would pay for the story.

Q. (By the prosecutor) Did he identify this other newspaperman? A. Yes, his name was Joe Hyams of the New York Herald-Tribune.

Q. Did he state the figure that he was dealing for with Mr. Joe Hyams? A. He said Mr. Hyams had promised, or at least had said he thought he could get $25,000.00.

* * * * *

"I said I didn't think that he would get $25,-00.00."

Appellant then offered his life story to Jennings for $30,000.00 and gave Jennings a copy of the manuscript he had dictated with Vaus' help [Ex. 254]. The *Saturday Evening Post, Life* and *Look* rejected this manuscript [Ex. 254], and it was returned to appellant [R. T. 5705-5709].

In April of 1958 Jennings and appellant met, and appellant consented to Jennings' writing a third person story about appellant for the *Saturday Evening Post,* for which appellant would receive no money [R. T. 5716, 5717]. Jennings started working and about a month later appellant asked for $15,000.00, and stated that if he gets the money it would have to be paid to a third party or the Government would get it; Jennings submitted the request to the magazine and it was turned down [R. T. 5717-5720].

In late 1958, after Jennings' articles were published, appellant, who stated that he was dissatisfied with what Hecht had written, asked Jennings to write a book about appellant, and the proceeds for appellant to be derived therefrom would be paid to a third person so

the Government wouldn't get it. Jennings did not contract to write the book [R. T. 5720-5724].

Mr. Jennings never heard of Henry Guttman [R. T. 5741].

Joseph E. Seide, a public relations and management man, met appellant in the summer of 1960 and discussed the sale of appellant's life story to a motion picture studio for which Seide was to get a percentage of the net profits [R. T. 3355-3359]. Seide was to sell the story that Hecht was writing to a motion picture studio on a sale-leaseback agreement (which Seide explained) [R. T. 5359-5363]. Hecht had not yet written a book [R. T. 5363, 5369, 5372]. Seide and appellant entered into a written agreement dated July 11, 1960 in which appellant authorized Seide to represent appellant for 30 days in the "sales and promotion of a picture" relating to appellant's life story and Seide would get 2% of the proceeds of the film [Ex. 398]. Seide was unsuccessful as he had no story [R. T. 5372].

Appellant was represented by an attorney in these transactions with Seide [R. T. 5355-5369, 5377]. Appellant never advised Seide if anyone else had any interest of any type in appellant's life story. Seide never heard of Henry Guttman [R. T. 5378].

According to appellant's testimony, appellant in the spring of 1961 signed a contract with a publisher to publish a book about his life story; Joe Hyams (misspelled in transcript) was contacted to write this book, and Hyams received a $7,500.00 advance out of which appellant received $2,500.00 [R. T. 7153-7155].

This completes the outline of those who were involved in appellant's life story as owners or authors or publicists.

Name	Function	Time Span	Date of Contract
Guttman	Owner	Feb. 1951 to date	June 14, 1951
Gielgud	Author	June 1951 to Dec. 1951	June 14, 1951 (with Guttman)
Vaus	Owner	Nov. 1955 to Sept. 1956	March 15, 1956
Harmon	Producer	July 1956 to June 1957	April 1957 (unexecuted)
Hecht	Author	June 1957 to date	(None in writing)
Jennings	Author	Dec. 1957 to Nov. 1958	(None in writing)
Seide	Publicist	June 1960 to Aug. 1960	July 11, 1960
Hyams	Author	Dec. 1957 to date	March 1961

2. Financiers.

We shall now discuss those people who transferred or were asked to transfer money to appellant on the basis of appellant's life story. In this regard, appellee has summarized the evidence of such transfers in Exhibits 1 to 10 contained in the Appendix to this brief.

There are some generalities that are applicable to each of these transferors. Each of them dealt personally with appellant. All but Charles Schneider had a "life story contract" of some kind. Not one of them knew about Guttman or his contract with appellant; not one of them had any knowledge about the others (except perhaps Bieber). There is no mathematical consistency between the amount of money appellant received from each of these persons and the "interest" in his life story that they received. Fisher got 5% on a $7,500.00 contract for which she paid $7,537.27; Bieber

got 5% on a $10,500.00 contract for which he paid $10,-500.00; Stemler got 10% on a $10,000.00 contract for which he paid $10,000.00; Koomer got 10% on a $15,-000.00 contract for which he paid $15,000.00; Krause got a total of 10% on two contracts totaling $25,000.00 for which he paid $25,000.00; Leitner got 10% on a $35,000.00 contract for which he paid $9,750.00; Feigenbaum got 10% on a $25,000.00 contract for which he paid $18,950.00; Bishop got 2% on a $7,500.00 contract for which he paid $7,500.00; Fortwangler turned down 3% on a $15,000.00 contract; and Stark turned down 8% on a $30,000.00 contract.

Fisher, Bieber, Koomer, Krause, Leitner, Feigenbaum, Bishop and Fortwangler have identical "life story agreements" and "promissory notes" except for date, amount of money, percentage, and their own names.

Stemler's contract with appellant stands alone and is quite different from the others. Schneider did not get a contract. The contract offered to Stark is different from any of the others; so there are three types of contracts involved.

The dates in these contracts do not conform to the facts stated in the very same contract.

Appellant received a total of $106,737.27 from these "life story" transactions, none of which was paid back, although there were many demands.

Ruth Fisher (Benson), a middle-aged woman florist, writer and cleaner, and the same woman who along with her brother Harmon Eldridge started Michael's Greenhouses, Inc., met appellant in late 1955 [R. T. 235-240]. In January of 1956 her brother loaned appellant $500 [Ex. 91]. In the period between August of 1957 and September 1958 Fisher transferred $7,-037.27 to appellant. Fisher received a promissory note from appellant that is dated March 5, 1958 and was notarized on May 16, 1958, and this note provides:

"PROMISSORY NOTE

March 5th, 1958

"$7500.00

"Five years after date, I promise to pay to the order of RUTH L. FISHER the sum of SEVENTY-FIVE HUNDRED ($7500.00) DOLLARS without interest until maturity and at the rate of seven per cent (7%) per annum after maturity, at 129 South Berendo Street, Los Angeles 4, California, or at such bank or other place in the City of Los Angeles, California, as the holder of this note may hereafter appoint.

/s/ MICHAEL-MICKEY-COHEN

"State of California, County of Los Angeles—ss.

Subscribed and sworn to before me, a notary public, this 16th day of May, 1958.

/s/ EDNA R. RUBY,
Notary Public.

My Commission Expires February 28, 1960". [Ex. 100].

Fisher also received a "life story agreement" along with the above-set forth Note which is also dated March 5, 1958 and was notarized on May 16, 1958, and this contract provides:

"KNOW ALL MEN BY THESE PRESSENTS, That whereas I, the undersigned have had discussions with certain persons concerning the possibility of having a book written based upon my life, and

"WHEREAS if such book is written it is also possible that sundry commercial ramifications of said book such as legitmate plays, motion pictures, television productions and other publications may develop or enure, and

"WHEREAS if such book or other publications are adapted commercially I will be entitled to receive certain monetary benefits for the use of my name and the information and assistance that I have furnished and will furnish to such author and publisher, and

"WHEREAS you, RUTH L. FISHER, have hereto advanced to me the sum of $7500.00 which loan is evidenced by my note of even date herewith due five years after date made payable to your order, and

"WHEREAS at the present time I have no funds with which to repay said note or any part thereof, but anticipate that the commercial publications based upon my life as aforesaid will produce a sum adequate to reimburse you for said advancement, and

"WHEREAS in the event that said book is published and other publications are completed, certain portions of the proceeds therefrom will be retained by the publishers and authors of said book and by agents and producers of said other publications hereinafter described. After said retentions and deductions certain sums would accrue to me or for my benefit by virtue of agreements, contracts, royalties, advancements and other payments resulting from any and all the aforesaid publications based upon my life (hereinafter sometime referred to as "my residue")

"NOW THEREFORE, in consideration of your advancement to me of the aforesaid sum of $7500.00, the receipt and sufficiency whereof is hereby acknowledged, and your granting to me time to repay said sum as is evidenced by said note, I do hereby grant, sell, assign, transfer and set over unto you RUTH L. FISHER, your execu-

tors, administrators and assigns to you and their own proper use and benefit, five per cent (5%) of my residue of any and all contracts, agreements, payments, royalties, rights to receive money, monies, or moneys worth, which may hereafter become due to me. It is understood that the monies received by you from your participating 5% interest in my residue shall be first applied against the aforementioned loan of $7500.00 until the same is full repaid, but that thereafter any additional sums which may be received by reason of said 5% participating interest in my residue as a result of the aforesaid publications shall be and belong to you absolutely and without reservation. Except for the application of the proceeds of such participating interest to the liquidation of my note as aforesaid, you have no duty or obligation whatsoever to account to me or anyone in my behalf.

"I do hereby give you RUTH L. FISHER, your executors, administrators and assigns the full power and authority for your own use and benefit but at your own cost to take all legal measures which may be proper or necessary for the complete recovery of the above described monies, property and choses in action or any portion or portions and in your name or otherwise, to prosecute and withdraw any suits or proceedings at law or in equity required or desired by you to enforce the provisions hereof.

"IN WITNESS WHEREOF, I have hereinafter set my hand and seal at Los Angeles, California, this 5th day of March, 1958.

/s/ MICHAEL-MICKEY-COHEN

(Seal)

"SIGNED IN THE PRESENCE OF:

/s/ Dorothy Burnett.

"State of California, County of Los Angeles—ss.

Subscribed and sworn to before me, a notary public, this 16th day of May, 1958.

/s/ Edna R. Ruby,
Notary Public.

My Commission Expires February 28, 1960". [Ex. 101].

After the date on the note and contract, March 5, 1958, appellant received from Fisher $4,037.27 on the note and contract [Exs. 95, 97, 102].

Fisher testified that she never asked for the note and contract; that she received an interest in a motion picture; that she didn't know anyone else had an interest; and that she would have loaned appellant the money without the note and contract [R. T. 313, 344, 360, 370].

George Bieber, a practicing attorney at law for 35 years in Chicago, Illinois and a friend of appellant's for over 20 years, had numerous financial transactions with appellant in 1957 and 1958; Bieber transferred $64,000.00 to appellant and was repaid $42,500.00 during this period, and the largest outstanding balance appellant owed Bieber at any one time was $22,500.00. Appellant still owes him $21,500.00 [Ex. 170-C; R. T. 2029-2069]. Bieber received a promissory note for $10,500.00 and a life story contract in the same amount dated February 3, 1958 and notarized February 11, 1958; Bieber did not loan appellant money on the basis of appellant's life story and did not ask for or expect the note and contract [R. T. 2074-2076; Exs. 430, 431].

Between January 20, 1958 and February 17, 1958 appellant only owed Bieber $5,500.00 [R. T. 2136; Ex. 170-C].

Bieber's life story money and Fisher's life story money were not charged to appellant as income in the year received.

Charles Schneider, the tree surgeon referred to above, handed appellant a $2,500.00 check dated April 10, 1957, upon which Barney Peller wrote the notation, "Loan made to Michael Mickey Cohen for future deal on motion picture of the life story of Michael Cohen" [Ex. 272]. When appellant met Schneider in Cincinnati, Ohio in April of 1957 he told him that he was writing a book about himself called the "Poison Has Left Me" which he thought would be a very successful book and could be a successful motion picture; appellant, with an assist from Barney Peller, asked Schneider for money for his book and Schneider was to get back a portion of the picture [R. T. 826, 833-834]. Schneider did not get a promissory note and life story contract [R. T. 834]. Schneider knew of no other investments or loans or transfers relating to appellant's life story [R. T. 835-836].

Aubrey Stemler, a vending machine representative for 25 years (and the same Stemler referred to above under Count Two), met appellant in 1956 [R. T. 1349-1351]. During the same period of time Stemler was having other financial transactions with appellant, he gave appellant four checks totaling $10,000.00, and each check bears a notation relating to appellant's life story. These notations use the words "investment" and "purchase" in relation to appellant's life story [Exs. 239-242]. Stemler purchased from appellant a 10% interest in the motion picture, "The Life of Mickey Cohen," for $10,000.00 [R. T. 1360, 1388]. Appellant brought the manuscript he had made with Vaus' aid [Ex. 254] to Stemler's home and let Stemler and his

wife read it; thereafter he offered to sell to Stemler 10% interest for $10,000.00 [R. T. 1361]. Stemler did not know of anyone else having any type of interest in appellant's life story [R. T. 1364]. On May 31, 1957, two weeks after Stemler made the last payment to appellant on his purchase of a 10% interest, Stemler, in appellant's presence, typed up an agreement and appellant signed it [R. T. 1364-1366; Ex. 251]. This contract provides:

"May 31st 1957

"Mr. Aubrey Stemler
2321 West Pico Blvd.
Los Angeles, Calif.

"Dear Sir:

"I the undersigned Michael Cohen (Mickey Cohen) does hereby assign ten per cent of all monies or other valuable considerations acc*ur*ing to my credit from the sale or production of the motion picture to be made of my life and tentatively called The Mickey Cohen Story.

"This assignment is given you in return for the payment of four checks totalling $10,000.00 the receipt of which is hereby acknowledged.

"These four checks are listed as follows: No. 2500 dated April 23rd 1957, No. 2495 dated May 7th 1957, No. 2496 dated May 15th 1957, No. 2497 dated May 15th 1957.

"It is further understood that should this motion picture not be in production within one year from date the above mentioned amount $10,000.00 is to be returned at your option with interest of 6% from the date shown above.

"Very truly yours,

/s/ Michael-Mickey-Cohen,
Michael Cohen."

[Ex. 251].

Stemler has never been repaid even a dime of this $10,000.00 [R. T. 1382].

Bernard Koomer, a cafe owner, met appellant in April 1957 [R. T. 2384]. On May 12, 1957 the Koomers met with appellant at appellant's request. Appellant told them: that his life story was about to be filmed; it would make money; he needed somebody to invest in it or the Government would get the half-million dollars in back taxes he owed and asked Koomers for $15,000.00 for 10% of the picture. Appellant also told them: Billy Graham was interested in the film and would endorse it; that appellant had an offer for $150,000.00 for the screen play from a studio. Appellant let the Koomers read the manuscript he prepared with Vaus' aid [Ex. 254; R. T. 2396-2402]. The parties met again the next day at a restaurant and the offer was repeated; the following day Koomer turned down the offer; appellant became abusive, then wanted a check in exchange for a ring [R. T. 2402-2406]. The parties met, and Koomer gave appellant two checks totaling $10,000.00, and at 2:00 a.m. the next day appellant gave Koomer a large diamond ring [Ex. 681; R. T. 2407-2411]. Later that day the ring transaction fell through because Koomer didn't want to go through with it and stopped payment on the checks; appellant became angry; they met later that day, and appellant snatched the ring from Koomer's hand, tore up Koomer's checks, and threw them in his face [R. T. 2411-2414]. That evening appellant went by Koomer's cafe and in an abusive and insulting manner threw a $10 bill at Koomer, which was returned to appellant [R. T. 2414-2416]. Koomer and his wife then received anonymous threatening telephone calls and were told to get in touch with appellant; twice that same day they telephoned appellant who was in New York and New Jersey and told him of the calls and that there was a misunderstanding and that they didn't want any prob-

lems [R. T. 2416-2420, 2459-2461]. That same night Koomer's wife wrote appellant a letter and Koomer enclosed a $7,500.00 check that was backdated to May 6, 1957 and bore the notation, "Advance on $15,000. loan to Michael Cohen for 10% of future story and motion picture rights to the Mickey Cohen Story" [Exs. 319, 322; R. T. 2421-2422]. Several days thereafter appellant returned from New York and met with Koomer who told him that he was sorry if there was any misunderstanding but that he was afraid of being involved with appellant; they discussed the $7,500.00 investment, and appellant said if Koomer ever needed the money he could always get it [R. T. 2422-2423].

On July 24, 1957 appellant got an additional $7,500.00 check from Koomer which bears the notation, "Final payment for 10% for All Rights to the Mickey Choen (*sic*) Story" [Ex. 320]. Koomer had been asking appellant for documentation of their transaction, and was told that he would get documents when he paid a total of $15,000.00 [R. T. 2428-2430]. After July of 1957 Koomer frequently tried to get his money back from appellant and he also tried to get documentation of the whole transaction; and eight months later, on March 31, 1958, Koomer got a promissory note and life story contract [R. T. 2430-2433].

The Koomers never received any of the $15,000.00 back although they tried to get it from appellant on more than one occasion [R. T. 2433].

Leonard S. Krause, M.D., a practicing psychiatrist for 15 years, met appellant in October of 1957 [R. T. 1165, 1177]. Krause had numerous transactions with appellant, some of which were conducted in the names of David Krause and Sadelle Bellows, the brother and sister of Dr. Krause [R. T. 1181, 1182, 1185]. In the period between November of 1957 and March of 1958 Krause gave appellant checks totaling $56,000.00,

and of this amount $13,000.00 in checks never cleared the bank accounts; an additional $18,000 in checks were accommodation checks (appellant paid for them); and the balance of $25,000.00 was applied on the life story [R. T. 1165-1172; Exs. 327-344]. Appellant, in October of 1957, told Krause that he (appellant) was in the process of settling some difference with the Government in connection with some former income tax liability, and in order to do this if he could get moving on the book and movie it would aid his cause considerably—so could he have $25,000.00 [R. T. 1181-1201]. Appellant also told Krause that the Government was interested in producing the movie and the book and that they were going to get a certain cut and the rest would be sufficient to take care of all people around him; appellant also said that the movie was on the verge of production [R. T. 1201-1202]. Krause paid appellant $25,000.00 over the next four months [R. T. 1188, 1189; Exs. 327-344]. Krause was utilizing his sister's and his brother's names in dealing with appellant and so received two notes and two life story contracts as follows: A promissory note for $10,000.00 and a contract in the same amount granting a 4% interest, both in the name of David Krause and both dated February 3, 1958; a promissory note for $15,000.00 and a contract in the same amount granting a 6% interest, both in the name of Sadelle Bellows, and both dated February 3, 1958 and both notarized on February 11, 1958 [Exs. 257-260]. Krause borrowed money to pay appellant and so explained to appellant, who told him he only needed it for temporary purposes and would get the money back for Krause whenever he needed it [R. T. 1188, 1191, 1199-1200]. Krause needed the money back and tried to get it from appellant on numerous occasions but without success [R. T. 1192, 1198]. Krause was very dissatisfied with the notes and contracts he received from appellant so he

obtained legal advice and tried to have appellant make the necessary changes [R. T. 1199; Exs. 351-356]. On May 27, 1958 Krause and his sister met appellant, appellant's sister and appellant's nephew, at which time Krause tried to tell appellant's sister about the $25,-000.00 in financial transactions and to get her to agree to accept the responsibility of repayment if anything happened to appellant; appellant interrupted, became irritated, violent, vituperative, and coarse, picked up a chair and threatened to hit Krause, and was restrained by two women and a boy; Krause left shortly thereafter without obtaining any satisfaction [R. T. 1192-1197; Ex. 353]. Krause had no knowledge of any other people having any type of interest in appellant's life story [R. T. 1287]. Krause has not been repaid any of his $25,000 [R. T. 1197, 1198].

Louis Leitner, a married man with three children who earns his livelihood driving a beer truck and makes less than $10,000 a year doing it, knew appellant when they were both "kids," and then for 26 years he did not see appellant [R. T. 1891-1896]. Then, in December 1957, apppellant ran into Leitner in a cafe. Appellant wanted to see Leitner's family and he was invited to do so [R. T. 1897]. Appellant went to Leitner's home; they reminisced for awhile; then appellant told Leitner that he was a pauper, that he was broke, that he had an opportunity to make some money to clear himself with the Government, and that he had an opportunity to go straight [R. T. 1898-1899]. Appellant then asked Leitner for $3,000.00 as he was trying to get Ben Hecht some money and he needed money bad, and Leitner gave him a check for $1,-500.00 dated January 20, 1958, which was negotiated by appellant nine days later; this check bears the notation, "as a personal loan," which Leitner wrote on the check at appellant's request, and appellant explained that he wanted it on the check because he knew Leitner had to

work hard for his money and that he had a family [R. T. 1908-1911; Ex. 370]. Appellant also told Leitner that if he needed the money back that appellant would borrow it for him and would repay Leitner; appellant told Leitner, "any time you want your money back I will give it to you on demand" [R. T. 1911-1913]. About a week later appellant asked Leitner for more money, and Leitner gave him a $2,000.00 check dated January 28, 1958, which was negotiated by appellant the next day along with the earlier check for $1,500.00 [R. T. 1914-1915; Ex. 371]. On the same date appellant cashed the two prior checks, January 29, 1958, he obtained three more checks from Leitner totaling $3,250 (one of which was postdated) [R. T. 1916-1921; Exs. 372-374].

It must be noted that the same day Leitner gave appellant the first check, January 20, 1958, on appellant's representations that he was broke, appellant cashed a $7,500.00 check he got from Billy Gray and appellant received $1,000.00 in currency from Michael Kasino [Ex. 945]. Also during the period of January 21, 1958 to January 29, 1958 appellant cashed $11,000.00 in checks from Michael Kasino [Ex. 945].

The three checks appellant received from Leitner on January 29, 1958 appellant cashed on February 3, 1958 in Chicago, Illinois with the help of Attorney George Bieber [Exs. 372-374].

Appellant, in April of 1958, asked Leitner for more money, and Leitner mortgaged his home and gave appellant two checks totaling $3,000.00 (one is postdated) [R. T. 1922-1923; Exs. 375, 376]. Leitner obtained the money to cover his checks to appellant by borrowing from a bank, borrowing from his brother, taking money out of his savings account, cashing in bonds, and mortgaging his home. Leitner's checks total $9,750.00 [R. T. 1924, 1925].

Before Leitner had given appellant the last two checks in April of 1958, appellant came to Leitner and gave him a promissory note for $35,000.00 and a life story agreement in the same amount; both these documents are dated February 3, 1958 and were notarized on February 11, 1958; appellant told Leitner that he was giving him these documents as insurance that he would get his money back, and appellant tried to get more money from Leitner but got just $3,000.00 more [R. T. 1926-1933; Exs. 379, 380]. Leitner only transferred $9,750.00 to appellant and never received any of it back although he tried to get it back [R. T. 1940-1943].

Leitner had no knowledge about the interests of other people in appellant's life story [R. T. 1945]. However, in March of 1961, after the indictment and just before trial, appellant contacted Leitner and showed him a contract from a publishing company [R. T. 1945-1947].

Michael Kasino, a 21-year-old press agent, company manager, and producer of one-night stands, along with two business partners, needed $15,000.00 in December of 1957 to finance a Johnny Mathis road show; appellant's name was mentioned by a secretary as a possible source of money. They met with appellant; a few days later appellant handed them a $15,000.00 check of Max Feigenbaum; they promised in writing to return the $15,000.00 with 10% interest on January 21, 1958. The tour took place, it lost money, and Kasino and his partners repaid appellant a total of $16,950.00 between January 20, 1958 and April 28, 1958 [R. T. 1618-1642, 1648-1666; Exs. 73, 77, 383, 385, 386, 391-393, 396, 397]. Feigenbaum was not advised that the money was repaid to appellant [R. T. 1666-1673].

Max Feigenbaum, a 70-year-old shoe wholesaler from Nashville, Tennessee, came to California in 1957 to visit his children, and met appellant [R. T. 1541-1545].

On appellant's recommendation, Feigenbaum gave his check for $15,000.00 for the Mathis tour; Feigenbaum had never heard of Johnny Mathis, a singer [R. T. 1551-1552]. Feigenbaum depended upon appellant to see that he got his money back [R. T. 1553]. After paying his money, Feigenbaum returned to Nashville where he was ill and hospitalized and eventually in early 1958 obtained $1,000 from appellant [R. T. 1609]. Feigenbaum in 1958 had numerous conversations with appellant in Los Angeles, California and in Nashville, Tennessee, and appellant never told Feigenbaum that he had collected the $15,000.00, plus $1,950.00 in interest; in fact it was not until April of 1960 that Feigenbaum learned of appellant's receipt of the $16,950.00, and even then he did not find out from appellant [R. T. 1610-1611].

In June of 1958 appellant went to Nashville, Tennessee with his attorney, Jack A. Dahlstrum, and met with Feigenbaum; while in Nashville appellant told Feigenbaum that if he collected anything from Kasino (who had already paid appellant) he would invest it for Feigenbaum in his (appellant's) life story, and this was agreeable to Feigenbaum [R. T. 1572-1603, 1608-1610]. Appellant, at that time, also asked Feigenbaum for $10,000.00; Feigenbaum said he didn't have it but gave him a check for $3,000.00 while telling him that the check was no good but appellant could make it good; shortly thereafter appellant telephoned Feigenbaum and said he was in a bad fix and needed money and could Feigenbaum help him; Feigenbaum sent him a $3,000.00 Cashier's check [R. T. 1562-1567; Ex. 397].

Feigenbaum received a life story contract which recites that Feigenbaum had advanced $25,000.00 to appellant and thereby got a 10% interest; this contract is dated March 7, 1958, and notarized March 7, 1958 [R. T. 1564-1567; Ex. 396].

Joseph Bishop, a personal manager and a business manager for Ben Blue, and formerly in the production side of motion pictures, met appellant in early 1958 [R. T. 1406-1409]. On April 6, 1958 appellant borrowed $800.00 from Bishop [R. T. 1409, 1410; Ex. 362]. On May 26, 1958 appellant obtained $6,000.00 from Bishop on the representation that a book was being written about him and he needed the money and would repay it in about 90 days; Bishop made his check payable to appellant's sister at appellant's request [R. T. 1409-1413; Ex. 363]. On June 2, 1958, June 15, 1958 and August 21, 1958 Bishop made out three checks that were cashed and total $1,200.00, out of which appellant received $700.00 in currency [R. T. 1413-1417; Exs. 364-366]. Bishop transferred a total of $7,500.00 to appellant.

Bishop received from appellant a promissory note for $7,500.00 and a life story contract in the same amount and giving him a 2% interest; both these documents are dated September 17, 1958 [R. T. 1417-1421; Exs. 367, 368]. Bishop had requested repayment of the money he transferred to appellant, and appellant advised he couldn't pay it; so appellant gave Bishop the note and the contract to protect him [R. T. 1421-1423].

Appellant and Bishop had discussed appellant's life story at the time of the $6,000.00 check; appellant had told him that there were producers interested in doing the book about appellant as a movie; and appellant was then told about Bishop's prior work on movies to which appellant responded that Bishop might be utilized on the production of the movie when the time comes; appellant also told Bishop that Hecht was having trouble with the last couple of chapters as he couldn't find an ending [R. T. 1423-1425].

Bishop had no knowledge of any other persons having any type of interest in appellant's life story [R. T.

1424-1425]. Bishop tried to collect his money back, but he was unsuccessful [R. T. 1430].

In September of 1958 appellant attempted to obtain money from Louis A. Fortwangler, 74-year-old retired businessman from Ohio. Fortwangler made a trip to California with Barney Peller; met appellant; appellant requested Fortwangler to go into business with him on appellant's life story, that he (appellant) couldn't have any money, and that they would make a lot of money. Appellant asked Fortwangler for $15,000.00; he did not get it; appellant sent Fortwangler an unsigned promissory note and life story contract offering 3%; it was not consummated [R. T. 1448-1474; Exs. 400-406].

In May of 1959 appellant attempted to obtain money from Mr. and Mrs. Eugene Stark, restaurant operators in Los Angeles, California; appellant offered to sell the Starks an interest in the picture and the book that was being written about him; appellant, on a subsequent meeting, handed Mr. Stark a $30,000.00 promissory note and a life story contract (unlike any of those mentioned above) for 8% and again asked Stark to buy a percentage of the picture. The Starks turned the deal down [R. T. 2652-2668; Exs. 407, 408]. Appellant had told Stark that Columbia Pictures was interested in appellant's life story; appellant did not tell Stark about anyone ese having any interest in his life story [R. T. 2667-2668].

This presentation covers the financial transactions directly involved with appellant's life story; however, there were other transactions with other persons that touched upon appellant and his life story that are not directly pertinent to income, but do go to representations made by appellant on this subject, *e.g.,* Ruth Allen, Samuel Brody, David Fertig, Gilbert Kitt, Lester Beckman, Jordan Freidman, Billy Gray and government

representatives, to name a few. Appellant also contacted entertainment stars, such as Red Skelton and Jerry Lewis regarding the portrayal of his life story.

It was never ascertained what attorney or attorneys drafted the several promissory notes and life story contracts, although it was established that some were typed and mailed from George Bieber's office [R. T. 1980-1988]. Appellant himself was unable to recollect what attorney or attorneys drafted these documents [R. T. 7356-7358].

It must be noted that appellant told Dean Jennings that so far as the life story contracts ever being repaid, appellant had protected himself in the contracts so that if there were no movie or no book appellant would not have to repay the money he received [R. T. 5736].

A book on appellant's life story has not been published. A motion picture on appellant's life story has not been made.

E. Count Four.

Count Four of the Indictment charges that from October 10, 1955 until September 16, 1960 appellant attempted to evade and defeat the payment of income taxes then due, owing and duly assessed against him in the total amount of $135,847.94 by wilfully failing to pay said taxes and by wilfully and knowingly misrepresenting to and concealing from the United States of America the true state of his financial affairs in that he (1) denied to agents of the Internal Revenue Service that he had any assets; (2) placed and caused to be placed his assets in the names of other persons; (3) deposited his assets with other persons; (4) dealt in currency; (5) caused his obligations to be paid through and in the names of other persons; (6) caused

monies paid to him to be paid through and in the names of other persons; and (7) paid and caused to be paid his creditors, other than the United States of America.

Appellant was found guilty on this count.

Appellant had filed individual income tax returns for the calendar years 1945, 1946 and 1947 and appellant and his wife, La Vonne, filed joint income tax returns for the calendar years 1948, 1949 and 1950 [Ex. 5].

On June 20, 1951 appellant was found guilty by a jury of four counts: three counts of wilful attempt to evade and defeat income taxes for the calendar years 1946, 1947 and 1948, in violation of 26 U. S. C. 145(b); and one count of making a false statement to a Government agency, the Internal Revenue Service, in violation of 18 U. S. C. 1001; appellant was sentenced on July 9, 1951 to a total of five years and $10,000 fine; appellant was remanded into custody of the United States [C. T. 579].

On July 10, 1951 appellant filed a notice of appeal; on July 11, 1951 appellant filed a petition for admission to bail pending appeal [C. T. 579].

The Commissioner of Internal Revenue authorized jeopardy assessments against appellant for the calendar years 1945, 1946 and 1947, and against appellant and his wife, jointly, for the calendar year 1948 in a telegram dated July 12, 1951 [Ex. 683]; pursuant to this telegram, notice of the assessments and demand for payment were made personally upon appellant and his wife on July 13, 1951, in the Los Angeles County Jail where appellant was confined, having elected not to commence his sentence and awaiting the decision on his bail request and while his wife was visiting him [R. T. 5026-5028; 5055-5060]. On July 13, 1951 Warrants for Distraint were issued and Notice of Federal Tax Liens were filed [Exs. 846, 847].

On July 13, 1951 bail pending appeal was denied for lack of a substantial question on appeal [C. T. 579]. In the following five months appellant was in the United States Court of Appeals for the Ninth Circuit on bail applications at least three times and he received some five orders from the Court, one of which granted appellant bail pending appeal but was stayed and eventually vacated by a *per curiam* order [C. T. 579; 191 F. 2d 300, 192 F. 2d 933]. Appellant exercised his right under Rule 38(a)(2) of the Federal Rules of Criminal Procedure not to commence service of his five-year sentence.

On August 9, 1951, less than sixty days after the jeopardy assessments were made (July 13, 1951), appellant was mailed a deficiency letter (often called a 90-day letter) with respect to his income taxes for the years 1945, 1946 and 1947; and this letter was sent by registered mail to appellant's "last known address," 513 Moreno Avenue, Los Angeles 49, California [Ex. 842; R. T. 5071-5073]. On the same date, August 9, 1951, appellant and his then wife were mailed a deficiency letter with respect to their joint income taxes for the year 1948; and this letter was sent by registered mail to appellant's and his then wife's "last known address," 513 Moreno Avenue, Los Angeles 49, California [Ex. 843; R. T. 5071-5074].

Neither appellant nor his then wife petitioned the Tax Court [R. T. 5071, 5075; Exs. 842-845]. No substantial portion of these jeopardy assessments has ever been paid by appellant or his then wife [Ex. 5].

Appellant and his then wife were also assessed as to the years 1949 and 1950; however, this was a regular assessment as distinguished from a jeopardy assessment. A notice of demand for payment of taxes for the years 1949 and 1950 was mailed to appellant and his then wife at 513 Moreno Avenue, Los Angeles

49, California; this produced no payment; so on May 8, 1952 appellant and his then wife were mailed a deficiency letter with respect to their joint income taxes for the years 1949 and 1950, and this letter was sent by registered mail to appellant's and his then wife's last known address, 513 Moreno Avenue, Los Angeles 49, California [R. T. 5025-5053; Ex. 844].

Neither appellant nor his then wife petitioned the Tax Court regarding the regular assessment for the years 1949 and 1950 [Exs. 844, 845]. No substantial portion of this assessment has ever been paid by appellant or his then wife [Ex. 5].

None of the letters referred to above were returned to the sender, and the address to which these letters were sent was the address supplied by appellant and his then wife on the tax returns for at least the years 1948, 1949 and 1950 [R. T. 5025-5053].

The total amount assessed for the six years as of October 9, 1955 was $135,847.94, excluding interest and penalties [R. T. 5033-5034; Ex. 946]; and the same amount for the same years is still due and owing.

On September 11, 1951, pursuant to a notice of levy and a warrant of distraint authorized and issued on July 13, 1951, the Collection Division of Internal Revenue Service seized appellant's Cadillac then in the possession of Hillcrest Motors, and on September 17, 1951 applied the $200.00 proceeds thus obtained to appellant's tax liability [R. T. 5110, 5112, 5136-5137, 5151-5152; Exs. 5, 846].

Lavonne Farkas married appellant on October 15, 1940 and divorced him on June 18, 1959; she and appellant had lived in an eight-room, one-story house at 513 Moreno, Los Angeles, from 1948 until September of 1951 [R. T. 4808-4809, 4938]. After appellant was convicted in 1951, his wife frequently visited him in the Los Angeles County Jail, and appellant re-

ceived a large number of letters while he was in the Jail [Ex. 587].

Appellant was released from custody on October 9, 1955, and a few weeks later appellant told James A. Vaus, Jr., that he had some bonds but couldn't cash them because of the Government [R. T. 704].

In June of 1956 a collection officer for Internal Revenue Service saw appellant in Vaus' office and asked him for payment on his back taxes; appellant did not pay anything; the officer left tax collection waiver forms with appellant [R. T. 5175; Ex. 848]. On August 17, 1956 appellant, his wife, and his attorney at the time, Paul Caruso, met with two collection officers in Caruso's office to sign the tax collection waivers; appellant signed two tax collection waivers, each of which is dated August 17, 1956; one waives the statute of limitation as to collection of the assessed taxes for 1945, 1946 and 1947, and the other waives the statute of limitation as to collection of the assessed taxes for 1948, 1949 and 1950; appellant's wife executed similar waivers [R. T. 5184; Ex. 848]. One of the waivers signed by appellant provides:

> "It is hereby agreed by and between Michael Cohen, 513 Moreno, Los Angeles, Calif. of now: 1550 Woodruff Ave, Los Angeles, California, party of the first part, and the Commissioner of Internal Revenue, party of the second part, that the amount of $108,029.23, representing the unpaid balance of an assessment of income tax for the period(s) *See over* made against the said party of the first part, appearing on the assessment list, under Serial No. *See over,* for the Los Angeles District, may be collected (together with such interest, penalties, or other additions as are provided for by law which have accrued and which may accrue on the assessment) from said

party of the first part by distraint or by a proceeding in court begun on or before December 31, 1962" [Ex. 848].

On the reverse side of this same waiver the following information is provided: the date and type of tax involved, the account number, the date of assessment, and the unpaid balance.

Throughout the period of time charged in Count Four, the Collection Division of Internal Revenue Service made numerous attempts to obtain payment on the assessed taxes of appellant [R. T. 5118-5171]. In this regard there were many contacts with appellant and a number of conferences with appellant and his representatives; by way of illustration, the following are referred to: two meetings with Harmon for one of which Harmon was alone and for the other appellant and Mrs. Churchin were also present [R. T. 6377-6380, 6388-6390, 5177]; two conferences which form the basis for Counts 12 and 13; conferences and correspondence with appellant's attorney, George Bieber [R. T. 2103]; and conferences and correspondence with appellant's accountant, Sam Chilkov; to name but a few.

Appellant, as is noted above, told many people that he was engaged in a plan to settle his account with the Government, *e.g.,* Jones, Krause, Leitner, Hecht, to name but a few.

Count Four charges that appellant attempted to evade and defeat the payment of past due, owing and duly assessed taxes by wilfully failing to pay said taxes and by wilfully and knowingly misrepresenting to and concealing from the Government the true state of his financial affairs in that he conducted himself in a certain fashion that is described in seven subheadings. We shall briefly detail the funds available to appellant with which he could have made some payment on his tax liability and then briefly give examples of how he con-

ducted his financial activities within the seven subheadings listed in Count Four of the Indictment.

In the period between October 10, 1955 and September 16, 1960 appellant received in excess of $356,738.10 [Ex. 945]. (Actually this exhibit does not include some $36,775.00 obtained from the following people in the amounts indicated: Mitchell—$500.00 [Court's Ex. 2], Vaughn—$1,000.00 [Ex. 786], Mandell—$4,500.00 [Exs. 170-D, 173-A], Henchel—$5,000.00 [R. T. 7349], Maidy—$2,000.00 [Exs. 173-A, 587]; Fogelson—$275.00 [Ex. 173-A], Tom Cohen—$22,500.00 [Ex. 170-D]).

The Government's figures (excluding the additional $36,775.00) break down as follows:

1955	$ 1,800.00	
1956	32,840.60	
1957	127,875.83	
1958	151,391.67	
1959	26,000.00	
1960	16,830.00	
Total:	$356,738.10	[Ex. 945]
plus:	36,775.00	
	$393,513.10	

Oren Cummins, appellant's accountant throughout the trial, calculated the cash received by appellant for just 1956, 1957 and 1958, and his figures are as follows:

1956	$ 26,840.60	
1957	158,545.83	
1958	153,033.70	
Total	$338,420.13	[R.T. 7490-7491]

Neither set of figures included the many thousands of dollars paid out by the Greenhouse to the Carousel on appellant's behalf to: restaurants, laundries, friends like McNulty, automobile payments, steam baths, clothing, air-conditioners and furnishings, hotels, and travel accommodations, telephones and answering services [Exs. 714, 945, 947, Q]. Thus, appellant personally and directly received cash or its equivalent during the period in question of nearly $400,000.00, and during this same period appellant conducted his financial affairs as set forth below.

As we noted above, Count Four charges specific types of conduct, and we shall now briefly illustrate each type.

1. Denied to Agents of the Internal Revenue Service That He Had Any Assets.

This subject matter is specifically treated below under Counts 12 and 13, the false statements to a Government agency counts.

2. Placed and Caused to Be Placed His Assets in the Names of Others.

Appellant had a series of Cadillacs registered in the names of others (see Counts 5 through 8 below). Appellant spent many thousands of dollars in apartment furnishings which were insured under the name of Ralph Sills [R. T. 2496]. Appellant possessed a 12.69 carat diamond ring which he had pawned in the name of A. Beaudoin although the ring was his and he got the money from the pawn shop [R. T. 3915-3927].

3. Deposited His Assets With Other Persons.

Appellant placed a collection of his jewelry with Billy Gray (see Count 10 below). Appellant placed a valuable ring and watch with Phil Packer [R. T. 4237-

4242]. Appellant placed the 12.69 carat diamond ring with Koomer (see above). Appellant placed bonds with his sister [R. T. 704, 7076-7078].

4. Dealt in Currency.

Appellant was observed on many occasions to be carrying a large roll of bills, *e.g.,* by Jennings, Fortwangler, Bieber, William K. Howard, to name a few. Appellant received $12,000 in currency from Bieber [R. T. 2068, 2069; Ex. 170]. Appellant received $14,744 in currency from Attorney Samuel Brody [R. T. 4138-4142; Ex. 559]. Appellant paid Jules Salkin approximately $8,000 in currency to have a newly built apartment altered before he moved in [R. T. 2892]. Appellant paid many bills in currency, *e.g.,* Al Pignola approximately $7,000 for suits, Quirino Furiani approximately $10,000 for interior decorating [R. T. 5875].

Appellant paid clothing bills of $1,000 for Candy Barr and Liz Renay [Exs. 452-458].

5. Caused His Obligations to Be Paid Through and in the Names of Other Persons.

Numerous personal obligations of appellant were paid for through and in the names of the Greenhouse and the Carousel, including but not limited to the following: payments on his Cadillacs, laundry, air-conditioners, restaurants and night clubs, hotels, air transportation, hats and clothing [Exs. 714, 945, Q]. Appellant frequently purchased or caused checks of someone to pay someone else, *e.g.,* Bellows' $10,000 check to pay Bieber [Exs. 334, 335, 347, 361, 423, 424]; Jones' $1,000 check to pay Eagan [Ex. 289]. Appellant also maintained a clothing account with Clinton Stoner in Bieber's name [Ex. 592].

6. Caused Monies Paid to Him to Be Paid Through and in the Names of Other Persons.

Appellant received many thousands of dollars from various people, and had them make their checks payable to someone other than himself, but he would get the proceeds; the following is merely illustrative of this conduct: Bieber's $15,000 in checks to Abe Phillips [Exs. 425-427]; Gilbert Kitt's $7,500 to Lillian Weiner [Ex. 435]; Kaseno's $8,200 in checks payable to cash [Exs. 383, 385, 386]; James Bernstein's checks payable to James Bernstein [Exs. 34-44]; Bieber's $7,000 check to Lillian Weiner [Ex. 420]; Bishop's $6,000 check to Lillian Weiner [Ex. 363]; Pomeranz's $2,500 check to Jack A. Dahlstrum [Ex. 695]; and the many checks made payable to the Greenhouse, which appellant cashed.

Appellant also told Dean Jennings that any financial transactions he might have with either the *Saturday Evening Post* or with Jennings personally would have to be paid to him through a third party [R. T. 5717-5720].

7. Paid and Caused to Be Paid His Creditors Other Than the United States of America.

Appellant did not pay one cent on his past due, owing and assessed taxes (see above), but he did pay other creditors such as those mentioned above; plus Billy Gray [Ex. 60]; Hillcrest Motor Co. [Exs. 913-917]; Cecil Bechman [R. T. 2260-2279]; Don Bowen for servicing automobiles of appellant and certain of his associates [Ex. 910]; and others [Ex. 947].

Appellant also paid nearly $7,000 in attorney's fees for Candy Barr, and $800 to hire private detectives for Candy Barr, and some $1,700 to hide Candy Barr out in Mexico, and $9,965.00 to purchase an additional Greenhouse [Exs. 177-178].

F. Counts Five Through Eight.

Each of the Counts Five through Eight charged appellant during a time certain with concealing his interest in a specific Cadillac automobile upon which levy was authorized and doing so with intent to evade and defeat the collection of $135,847.94 in income taxes due, owing and assessed.

Appellant was found guilty of Counts Five and Eight, and not guilty of Counts Six and Seven.

In the Appendix to this brief is a chart summarizing the evidence relating to the acquisition, financing, and registering of each of the four Cadillacs, plus a Cadillac that was purchased through the Greenhouse by the Churchins and traded in by appellant on the Cadillac involved in Count Five.

In October of 1956 the Churchins purchased a 1956 Cadillac Coupe de Ville for appellant; he selected the vehicle; he made arrangements for the down payment; he alone used the vehicle; the vehicle was purchased in the name of the Greenhouse [R. T. 562-572, 6140-6146, Ex. 607]. The Churchins walked away from the Greenhouse and their investment therein and appellant's sister took over the Greenhouse a few weeks after this vehicle was acquired [R. T. 437; Ex. 121]. This vehicle was traded in less than four months later on on a 1957 Cadillac El Dorado Seville, which appellant selected and exclusively used although it was registered in the name of the Greenhouse [R. T. 6147-6149].

On August 29, 1957 appellant's sister sold the Greenhouse to Joel Hamamoto; however, the Cadillac was not sold—it stayed in appellant's exclusive control and this is Count Five [R. T. 7262; Exs. 179, 190-196].

On September 18, 1957 appellant traded the 1957 Cadillac El Dorado Seville in for a 1957 Cadillac El Dorado Brougham; he selected the vehicle, he had ex-

clusive control over the vehicle, and he had it registered in the name of George or Lillian Weiner [R. T. 6160-6164; Exs. 197-204]. This is the Cadillac in Count Six of the Indictment.

On March 11, 1959 appellant traded in the 1957 Cadillac El Dorado Brougham on a 1959 Cadillac El Dorado Biarritz; he selected the vehicle, he had exclusive control over the vehicle, and he had it registered in the name of Lillian Weiner [R. T. 6165-6175; Exs. 206-216, 570]. This is the Cadillac in Count Seven of the Indictment.

On February 2, 1960 appellant traded in the 1959 Cadillac El Dorado Biarritz on a 1960 Cadillac El Dorado Seville, he selected the vehicle, he had exclusive control over the vehicle, and he had it registered in the name of Lillie Weiner [R. T. 6175-6181; Exs. 218-233]. This is the Cadillac involved in Count Eight of the Indictment.

Each of these five Cadillacs were purchased from Hillcrest Motor Company, and in each instance the prior Cadillac was a trade-in. The payments on these Cadillacs were made either with Greenhouse checks, Carousel checks, or Lillian Weiner's own checks, and charged against appellant through either the loans payable account of the Greenhouse or the exchange account of the Carousel [Exs. 713-A-K, 714, 947].

Oren Cummins, appellant's accountant during the trial, credited appellant with the sales taxes paid on the purchase of these Cadillacs [R. T. 7563-7576; Exs. R, S, T]; Cummins also credited appellant with the interest paid on the purchase and repair of these Cadillacs; Cummins also testified that he considered the Cadillac in Count Five of the Indictment an asset of appellant because "after discontinuing the business of the Greenhouse . . . he took it, I don't know why it wouldn't be his" [R. T. 7565].

G. Count Nine.

Count Nine of the Indictment charges that from October 9, 1955 to January 29, 1960 appellant concealed a 12.69 carat diamond ring upon which levy was authorized, with intent to evade and defeat the collection of $135,847.94 in income taxes due, owing and assessed.

Appellant was found guilty on this Count.

In the late 1940s appellant gave his wife a 12.69 carat diamond ring [R. T. 4808; Ex. 681]. In 1950, when appellant was being investigated for tax evasion, he took this ring and a number of other pieces of her jewelry from his wife [R. T. 4817]. Appellant was convicted in 1951 and released from custody on October 9, 1955 (above). After appellant came home from the penitentiary his wife on several occasions asked for her jewelry back, and appellant told her that he no longer had it; she divorced him in 1959 and received a dollar a year alimony [R. T. 4817-4818].

Appellant's story is that in 1950 he took this ring and some other jewelry of his wife's and his own and left it with Joe Henchel in New York, who "loaned" him $30,000 at the time; when appellant came home, and after he was off parole sometime in 1956 or 1957 he went to New York, saw Joe Henchel, and got not only the ring and other jewelry back, but also an additional $5,000.00 [R. T. 7100-7103]. Henchel, according to appellant, died before trial [R. T. 7344].

On March 14, 1957 appellant met with collection officers of Internal Revenue Service and told them he had no assets of any kind that he knew of (this is Count Twelve of the Indictment).

In May of 1957 appellant asked Koomer for a big check to take back to New York and for which appellant would give Koomer the value of the check (appellant used the Jewish expression "varda"); Koomer gave

appellant two checks totaling $10,000.00, and appellant gave Koomer the 12.69 carat diamond ring as "varda"; Koomer was not satisfied with the transaction so he stopped payment on his two checks and so advised appellant; appellant reclaimed the ring and returned Koomer's two checks; Koomer had the ring for about a day [R. T. 2403-2414; Ex. 681].

Appellant in May of 1957 gave Billy Gray a collection of jewelry to hold as security for numerous financial transactions between the two men, and this his jewelry was returned to appellant in late 1958 (this jewelry is the basis of Count Ten of the Indictment). Included in this collection of jewelry was the 12.69 carat diamond ring [R. T. 3734-3740, 3806].

Alvin Beaudoin, a part-time actor, met appellant in the summer of 1958 and became friendly with him [R. T. 3909-3915]. On October 17, 1959 appellant went to Beaudoin's home; appellant wanted to borrow $10,000 to $15,000 in connection with Candy Barr; appellant produced the 12.69 carat diamond ring, showed it to Beaudoin, and offered it as collateral; Beaudoin said it was impossible for him to raise the money as his funds were all tied up in Detroit, but Beaudoin told appellant that with a ring like the one he had he could probably pawn it and get $5,000 [R. T. 3916-3918]. Appellant told Beaudoin that he personally could not pawn the ring, whereupon Beaudoin offered to do so and telephoned Herb Clark of the Hollywood Collateral Loan Company in Hollywood, California; appellant gave the ring to Beaudoin; Beaudoin and his wife took the ring to the pawnshop and were offered $2,500.00 for it; they declined the offer, went to the parking lot beside the pawnshop, met appellant, advised him of the offer, and appellant told him to take the $2,500.00 and bring it to a designated coffee shop where he would be waiting; the Beau-

doins went back to the pawnshop and were able to get $3,000.00 for the ring which they put in a white envelope along with the pawn ticket and turned the envelope over to appellant at the coffee shop [R. T. 3918-3927]. Mrs. Beaudoin and Herbert Clark, the pawnbroker, testified about this transaction substantially the same as above [R. T. 3939-3973; Exs. 589, 801, 802].

On December 2, 1959, at Rondelli's restaurant in Los Angeles, a man was shot and slain; appellant was in attendance at the time, along with Claretta Hashagen, George Perry, Sam Lo Cigno, Joseph De Carlo, Roger Leonard and Phil Packer (all of whom were witnesses in the trial below); appellant was questioned and arrested by the police investigating the homicide and at that time he had the pawn ticket in his pocket [R. T. 4412].

Appellant admitted from the witness stand that he gave the ring to Koomer as security for Koomer's checks [R. T. 7093]. Appellant appears to have admitted that the ring was among the collection of jewelry that Billy Gray held for him [R. T. 7104].

H. Count Ten.

Count Ten of the Indictment charges that from May 15, 1957 to May 15, 1958 appellant concealed a collection of jewelry upon which levy was authorized, with intent to evade and defeat the collection of $135,847.94 in income taxes due, owing and assessed.

Appellant was found guilty on this Count.

As was seen above in the facts pertinent to Count Nine, appellant in 1950 gathered up his and his wife's jewelry. Appellant claims he received $30,000.00 on a pledge of this jewelry to Joe Henchel in New York, and in 1956 or 1957 he retrieved this jewelry and an

additional $5,000.00 from Henchel; appellant further states he then took some of his personal jewelry out of this collection and turned the rest over to Billy Gray to hold for him [R. T. 7104].

William Victor Gray, known as Billy Gray, the owner of the Band Box night club and an entertainer for some 30 years, met appellant in the late 1930's in Chicago [R. T. 3722-3725]. Gray had numerous contacts with appellant in the years between 1955 and 1960, including a five-day trip to Chicago as appellant's guest, and a week long fishing trip in La Paz, Mexico, with appellant and others [R. T. 3727-3729].

In the spring of 1957 appellant approached Gray in a parking lot and stated that he had gone into the greenhouse business and that he needed a little money (three months later the Greenhouse was sold to Hamamoto), and appellant offered Gray, as security for the money, a box of jewelry; Gray transferred $10,000.00 to appellant and appellant handed Gray a box of jewelry in which there were diamond rings (including the 12.69 carat diamond ring), earrings, clips, a necklace, pencils, knives, and miscellaneous little pieces; Gray placed the box of jewelry in his safety deposit box [R. T. 3729-3741]. Appellant repaid Gray in approximately one month and Gray returned the jewelry to appellant [R. T. 3743]. Appellant in May of 1957 again approached Gray with a request for money, which Gray answered, and for which Gray once again received this same box of jewelry; Gray took the jewelry home, showed it to his wife, and then hid it behind the cedar paneling in the master bedroom of his home where it remained for at least a year before it was returned to appellant [R. T. 3742-3748]. In the next full year Gray borrowed some $56,000 from his bank in some ten different loans and turned it all over to appellant in either cash or cashier's checks; and

appellant repaid either Gray or the bank in cash in the same year; the largest outstanding balance on these loans at any one time was $21,000.00 [R. T. 3748-3772; Exs. 48-60]. It was during this same year that Gray held appellant's jewelry. At the time these loans commence, appellant also offered Gray a piece of appellant's life story [R. T. 3795-3796]. Appellant was a frequent visitor at Gray's night club and his tabs were paid by Greenhouse checks [R. T. 3772-3783]. Gray also cashed a large number of checks for appellant in which he turned the cash over to appellant as contrasted to applying the check or the proceeds to the balance appellant owed him, including: five checks of the Krauses totaling $14,500.00 and three checks of Bieber's payable to Abe Phillips [R. T. 3772-3790]. During the trial, and while appellant's wife was on the witness stand, appellant, through his attorney, produced the box of jewelry (minus some pieces) that is the subject matter of this Count [R. T. 4926-4931; Ex. H].

I. Count Eleven.

Count Eleven of the Indictment charges that on December 2, 1959 appellant concealed a 3½ carat diamond cats-eye ring, a heart-shaped diamond pendant, a wrist watch with a platinum band, and an $800.00 Western Union Money Order payable to appellant, upon which levy was authorized, with intent to evade and defeat the collection of $135,847.94 in income taxes due, owing, and assessed.

Appellant was found not guilty on this Count.

On December 2, 1959, at Rondelli's restaurant in Los Angeles, California, a man was shot and killed; Claretta Hashagen was present at the time with appellant, as was Roger Leonard, Joe De Carlo, George Perry, Sam Lo Cigno, and Phil Packer; after the

shooting Claretta Hashagen left the restaurant and as she was leaving Phil Packer handed her the ring, the watch, and the money order which she took with her when she drove home alone in appellant's Cadillac [R. T. 4650-4653]. The police took Claretta Hashagen to the police building for questioning the following day, and while she was there she wrote a note to her sister directing her to turn over to the police the ring, the watch, the money order, and the pendant [R. T. 4653-4659]. Claretta Hashagen testified that the pendant was a gift to her from an unidentifiable male of indeterminate height, weight and age, and she received it prior to meeting appellant [R. T. 4644-4649].

Both Phil Packer and appellant testified that the watch and ring belonged to appellant, but that when appellant borrowed $9,750.00 from Packer in 1956 he gave Packer these items to hold as security; they both say that appellant borrowed the jewelry from Packer on occasions and returned it when he was finished with it; neither one of them could recall who had this jewelry on December 2, 1959 [R. T. 4249, 7354-7355].

The $800.00 Western Union Money Order was the payment of a gambling debt that was sent to appellant by Sam Schanker because Schanker could not locate the man who won the bet: Sam Lo Cigno, who denies he ever made the bet [R. T. 4713-4715, 4724]. On the night of December 2, 1959 appellant left the restaurant, went to the Western Union office, picked up the $800.00 money order, and returned to the restaurant [R. T. 4502-4506].

J. Count Twelve.

Count Twelve charges that on March 14, 1957 appellant falsified, concealed, and covered up a material fact and made a false statement and representation to the Internal Revenue Service in that appellant stated that he had no assets of any kind that he knew of.

Appellant was found not guilty on this Count.

Following appellant's release from confinement on October 9, 1955, collection officers of the Internal Revenue Service attempted to collect delinquent income taxes of appellant for the years 1945 to 1950, inclusive. On March 14, 1957 a conference was held between appellant and collection officers Peter J. Cena, Peter Bertoglio and LaVerne Nelson to discuss collection of appellant's delinquent taxes. Appellant was asked what assets he had and he denied having any [R. T. 5127-5128, 5180, 5182]. Appellant was not under oath nor represented by counsel at this conference.

On May 3, 1957 appellant cashed savings bonds, held in his own name since the early 1940's, receiving $7,345.30, including interest [R. T. 786-789]. During the trial, at least two witnesses testified about appellant's possession of these bonds. James Vaus was told by appellant in late 1955 that appellant had bonds but could not cash them because of the Government [R. T. 704]. Robert Cowan in December 1955 saw bonds in appellant's possession [R. T. 748-752].

Phillip Packer, a long-time associate of appellant, testified in trial that he had loaned $9,500.00 to appellant between November 19, 1956 and December 3, 1956 and received as security certain jewelry from appellant [R. T. 4232-4237; Exs. 682, 829]. Appellant from time to time received the jewelry back from Packer who would wear it and then return it to Packer [R. T. 4241-4242]. When not in use by appellant the jewelry was kept in a trunk by Packer [R. T. 4240].

K. Count Thirteen.

Count Thirteen charges that on September 18, 1957 appellant falsified, concealed, and covered up a material fact and made a false statement and representation to the Internal Revenue Service in that appellant stated that no person had any property or rights belonging to him exclusive of the rights in a book concerning his life story.

Appellant was found guilty on this Count.

After nearly two years of attempting to collect past due, owing and assessed taxes of appellant without success, collection officer Guy McCown had a summons served upon appellant calling appellant to come in to discuss ways and means of paying his liabilities [R. T. 5275].

On September 18, 1957 appellant appeared with his accountant, Samuel Chilkov, C.P.A., at the offices of the District Director of Internal Revenue, Los Angeles, California; at that time officer McCown explained to appellant that he was "summoned to appear and to testify with regard to his financial position and for the purpose of determining ability to pay taxes owing by him to the United States" [R. T. 5209-5210; Ex. 587]. McCown then went on to tell appellant that he was going to be placed under oath, but first outlined the position of the Government with regards to appellant and the tax assessments owed by appellant; McCown then explained to appellant in some detail the duties and functions of Internal Revenue Service; and when he concluded he asked appellant if appellant had any preliminary statement to make before being sworn, to which appellant replied, "I can't think of any"; appellant was then placed under oath [R. T. 5210-5213; Ex. 587].

McCown began the questioning by advising appellant that he did not have to answer any question that

would incriminate him; and then advised appellant that "a record of our conference here today is being made, and when it is completed a copy of it will be made available to you" [R. T. 5213; Ex. 587].

McCown then inquired into appellant's background, employment and monthly expenses; McCown then asked in three different forms whether appellant had any assets when he came home from prison that could have been applied to reduce appellant's liability to the Government had appellant been so inclined, and appellant finally said that he was able to lay his hands on about $8,000 that has since been used [R. T. 5219-5221; Ex. 587].

The following questions were then asked of appellant by McCown and appellant gave the following answers:

> "Q. At this time in round figures of a thousand dollars more or less, exclusive of your clothing or any furniture that you may own, what would you say your net worth is?
>
> (Conference is had between Cohen and Chilkov).
>
> Q. I will re-word my question. What would you consider your assets to be exclusive of the book or picture rights that there may be to the book? Exclusive of that and exclusive of monies that have been invested in that? Cash, bonds, real estate, jewelry over and above rings and watch that a man may wear. Are you worth $10,000.00?
>
> A. No, sir.
>
> Q. Are you worth $5,000.00? A. No, sir.
>
> Q. Now sir, do I understand that you are at this time without funds other than money that is

advanced on the picture or in anticipation of the picture or book or what they will produce?

A. That is absolutely correct.

Q. Does any member of your immediate family, your brothers, your sisters, your mother, your stepfather or anyone else in your family hold assets that belong to you? A. Not one nickel.

Q. Does anyone have any property or rights belonging to you exclusive of the book or its potential worth? A. No, sir." [R. T. 5221-5222; Ex. 587].

After this answer, attention was focused on the Greenhouse and appellant's affiliation thereto with appellant supplying long narrative answers, some ten pages in length; at four o'clock that day the conference was recessed and it resumed at two o'clock the next day, September 19, 1957, with appellant and his accountant in attendance [R. T. 5222-5240; Ex. 587]. In this session, McCown by way of summary said:

> "Q. As of the present moment your net worth consists of clothing and personal effects. You have no real estate, no stocks, no bonds or no properties other than personal effects?"

to which question appellant replied: "None whatsoever . . ." and then appellant told about some old gambling equipment he once owned [R. T. 5241; Ex. 587].

The rest of the conference took up money appellant had borrowed, or had been given to him, and the status and development of appellant's life story for commercial exploitation [R. T. 5244-5255; Ex. 587].

In the first week of October 1957 McCown met with appellant and gave him a copy of the statement [Ex. 587] and discussed the payment of taxes [R. T. 5256].

Appellant, on December 5, 1957, wrote a letter to McCown in which he said: "I have reviewed the transcript of our conference of September 18th and 19, 1957 and except for some minor errors, the transcript is correct" [Ex. 588].

It was from May of 1957 to at least May of 1958 that appellant's jewelry was secreted in Gray's home (*supra*).

It was from late 1956 until December 2, 1959 that appellant's ring and watch were in Packer's trunk (*supra*).

Two days before the conference, September 16, 1957, appellant obtained $5,000.00 from Stemler supposedly for sales tax and labor bills that had to be paid to close out the escrow selling the Greenhouse (*supra*).

On the very day the conference commenced, September 18, 1957, appellant traded in the 1957 Cadillac El Dorado Seville on a 1957 Cadillac El Dorado Braugham, costing a total of $16,222.24 (*supra*).

On the second day of the conference, September 19, 1957, appellant cashed two checks: a $5,000.00 check of George Bieber's, and a $4,000.00 check of Billy Gray's.

V.
ARGUMENT.

A. Preliminary Statement.

In appellant's brief he lists 18 specifications of error, 13 of which concern jury instructions [5 through 17], and 3 of which are general in nature and for which the underlying record in the trial court is not set forth [1, 4 and 18]. Appellant, in his brief, sets forth 9 arguments but without particular reference to the 18 specifications of error. Some of the specifications of error are not argued at all [5, 6 and 16] and others are argued only inferentially [1, 4 and 18].

The only argument raised by appellant that affects Counts 5, 8, 9 and 10 of the Indictment is his argument IX.B. on the sufficiency of the evidence; there are no errors specified that relate specially or particularly to any of these four counts.

Appellee shall take up each of appellant's arguments, only not in the same sequence appellant utilized, but rather in a sequence that follows the counts of the Indictment, and thus the statement of facts, in chronological order.

B. Summary of Appellee's Argument.

(1) There Was No Error Involved in the Jury Instructions Given and Refused Relating to Counts Two and Three of the Indictment; and the Verdict as to Counts Two and Three Was Supported by Substantial Evidence and Was Not Contrary to the Weight of Evidence.

(a) The rule of this Court pertaining to assigning jury instructions as errors on appeal were not followed.

(b) Rule 30 of the Federal Rules of Criminal Procedure was not followed.

(c) The trial court did not err in refusing to give appellant's requested instruction No. 18, because it gave it in substance and effect.

(d) The trial court did not err in refusing to give appellant's requested instruction No. 26, because it is an unsupported conclusion of fact and not a statement of law.

(e) The trial court did not err in refusing to give appellant's requested instructions Nos 63, 74-80, relating to California crimes, because said instructions do not set forth applicable law; and the court did not err in giving its instructions as to what constitutes income because said instructions do set forth applicable law.

(f) The verdict of guilty as to Counts Two and Three was supported by substantial evidence and was not contrary to the weight of evidence.

(g) The trial court did not err in refusing to give appellant's requested instructions Nos. 37, 49, and 56 pertaining to lesser included offenses, because they are legally inaccurate.

(2) It Was Not Error for the Trial Court to Admit the Testimony Pertaining to Religious Activities, Matters and Beliefs of Appellant Because Such Testimony Was Relevant and Material to Issues in the Case.

(3) The Requirements of Law That Appellant Receive Notice of the Deficiency Were Complied With.

(a) The mailing of the notice of deficiency was in compliance with the statutory requirements.

(b) The law does not require the Government to give personal notice of a deficiency, and in any event the evidence shows that appellant had personal knowledge of the deficiency.

(4) Appellant Was Not Placed in Double Jeopardy.

(a) 26 U. S. C. 7201 defines more than one offense.

(b) Appellant was not prosecuted twice on the same facts or transactions.

(5) The Verdict of Guilty as to Counts Five, Eight, Nine and Ten Was Supported by Substantial Evidence and Was Not Contrary to the Weight of Evidence.

(6) Appellant Was Properly Convicted of Violating 18 U. S. C. 1001.

(7) The Court Did Not Err in Denying Appellant's Motions for Mistrial.

(a) Appellant was not denied his right to counsel because his attorney was a Government witness.

(b) The court did not err in denying appellant's motions for mistrial based on newspaper publicity.

C. There Was No Error Involved in the Jury Instructions Given and Refused Relating to Counts Two and Three of the Indictment; and the Verdict as to Counts Two and Three Was Supported by Substantial Evidence and Was Not Contrary to the Weight of Evidence.

1. The Rules of This Court Pertaining to Assigning Jury Instructions as Errors on Appeal Were Not Followed.

The Rules of the United States Court of Appeals for the Ninth Circuit provide in pertinent part that appellant's brief shall:

> "When the error alleged is to the charge of the court, the specifications shall set out the part referred to totidem verbis, whether it be in instructions given or instructions refused, together with the grounds of the objections urged at the trial" (Rule 18. Briefs 2. (d)).

In appellant's specifications of errors 5 through 16 he sets out in full his requested instructions which he claims were refused; but in his specification 17 he merely cites three of his requested instructions which the court refused to give by number. Appellant argues (Argument VII) that it was error to fail to give these three instructions, and even in his argument he fails to set forth the requested instructions. This Court need not and should not consider appellant's specification 17 and Argument VII, if its rules are to be effective.

The Rules of this Court also require that the grounds of objections urged at the trial be set forth. This rule was not followed as to any of the specifications 5 through 17 or in the arguments on jury instructions (V, VI and VII).

2. Rule 30 of the Federal Rules of Criminal Procedure Was Not Followed.

Rule 30, entitled "Instructions", provides:

> "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

The first three sentences of this rule were followed to the letter [R. T. 7586-7594]. The fourth sentence of this rule has been totally ignored by appellant. At the conclusion of the court's instructions to the jury, the trial judge afforded counsel the opportunity to object to the charge or omission therefrom, and appellant's counsel did in fact object to the failure to give all of his requested instructions. Appellant did not set forth any grounds of his objections to any of the instructions he raises here as error [R. T. 8039-8041]. This of course explains why appellant did not conform to this Court's Rule about setting forth the grounds of the objections urged at the trial—he didn't put forth any grounds of objections at the trial.

3. The Trial Court Did Not Err in Refusing to Give Appellant's Requested Instruction No. 18, Because It Gave It in Substance and Effect.

Appellant's specification 5 and his argument V claim it was error to refuse to give his requested instruction No. 18 which deals with "Mere suspicion is insufficient proof of fraud." The court instructed:

> "You must not indulge in speculation or guesswork under any circumstances, nor hastily or lightly draw inferences or conclusions . . . you may not pile inference upon inference. . . ." [R. T. 8017].
>
> "It is not sufficient for the Government to prove any material fact by either guesswork, speculation, conjecture, suspicion, or by a preponderance of the evidence, or only to the extent that the evidence pertaining to such fact is evenly balanced, or uncertain, or is as consistent with guilt as with innocence. None of these is sufficient to prove essential facts in a criminal case." [R. T. 8027].

Obviously, the instructions given not only cover the instruction requested, but do so in a superior fashion. The Court in trial advised counsel in writing that appellant's requested instruction No. 18 would be substantially given [R. T. 7590].

4. The Trial Court Did Not Err in Refusing to Give Appellant's Requested Instruction No. 26, Because It Is an Unsupported Conclusion of Fact and Not a Statement of Law.

Appellant's specification 6 claims it was error not to instruct the jury that monies received by appellant pursuant to or in anticipation of certain instruments executed by appellant were loans and as such are not income. Appellant did not even argue this specification. It is apparent that this requested instruction is unin-

telliglble and ambiguous on its face, and, of course, it assumes as if it were an established fact the very issue before the jury, namely: whether or not such monies were loans. This instruction is tantamount to a directed verdict, and as such there is no basis for it.

5. The Trial Court Did Not Err in Refusing to Give Appellant's Requested Instructions Nos. 63, 74-80, Relating to California Crimes, Because Said Instructions Do Not Set Forth Applicable Law; and the Court Did Not Err in Giving Its Instructions as to What Constitutes Income Because Said Instructions Do Set Forth Applicable Law.

Counts Two and Three of the Indictment charge an attempt to evade and defeat income taxes, and it was the Government's position that appellant had acquired income in the years charged which he had not reported on his income tax returns. The Government was able to show that appellant had received large sums of money which he did not report on his income tax returns and from which he derived the economic use and benefit; the specific amounts of money, the source of the money, the manner in which the money was received and when it was received were all shown. The Government contended that such money was taxable income; appellant contended that such money was not taxable income because it was bona fide loans. The court instructed, in essence, that money received from any source constitutes taxable income when its recipient has such control over it that as a practical matter he derives readily realizable economic value from it and has freedom to dispose of it or use it at will; the court also instructed at great length and in great detail as to what constitutes a loan and that a loan is not taxable income. The jury decided that the funds received were taxable income and not loans.

In *Davis v. United States,* 226 F. 2d 331 (6 Cir. 1955), cert. denied 350 U. S. 965 (1956) an income tax evasion case wherein the Government showed that the taxpayer had received large sums of cash, and the source and amounts thereof, which were not reported on his tax returns, and which the taxpayer claimed he was merely holding for another's benefit, the court, while observing that it did not matter whether the taxpayer had received this money legally as a dividend or whether he took it fraudulently, stated:

> "While, of course, the burden of proof does not shift in a criminal case, it is the rule that when the government establishes a prima facie case, it is then for the defendant to overcome the inferences reasonably to be drawn from the proven facts. Thus, evidence of unexplained funds or property in the hands of a taxpayer establishes a prima facie case of understatement of income, and it is then incumbent on him to overcome the logical inferences to be drawn from such proof. United States v. Hornstein, 7 Cir., 176 F. 2d 217, 220. The government is not required to establish income tax evasion by the same processes and formalities which a taxpayer is required to observe in making his return. The existence of unreported income may be demonstrated by any practical method of proof that is available in the circumstances of the particular situation. It is not incumbent upon the government, in making a prima facie case of evasion, to prove the non-existence of any other deductions than those which the taxpayer has claimed in his return. If the taxpayer legally has other deductions than those which he has claimed, it is his privilege to show them and explain them as part of his defense; Clark v. United States, 8 Cir., 211 F. 2d 100, 103; and if a man has a business of a

> lucrative nature and is constantly receiving money and depositing it to his own account and using it for his own purposes, this is proof that he has income, and if the amount exceeds exemptions and deductions, that the income is taxable. Gleckman v. United States, 8 Cir., 80 F. 2d 394."

And to the same effect, the court in *Wallace v. United States,* 281 F. 2d 656 (4 Cir. 1960), said:

> "We can understand that the jury could easily reject the explanation that these checks were intended to repay a loan from Maurice to Randolph. It is true that the only evidence presented on the Government's behalf was that the checks were disbursed to Maurice Puckett. However, the explanation offered by Wallace as to these checks does not necessarily destroy their probative value. While the burden of proof does not shift in a criminal case, it is the rule that when the Government establishes a prima acie case, it is then for the defendant to overcome the inferences reasonably to be drawn from the proven facts. Thus, evidence of unreported funds or property in the hands of a taxpayer establishes a prima facie case of understatement of income, 'and it is then incumbent on him to overcome the logical inferences to be drawn from such proof.' "

It was not the Government's intention or burden to prove that appellant was a swindler or thief or confidence man, but rather the Government proved that appellant received certain money that he was required to pay income taxes on. It is not necessary for the Government to label the funds.

The Internal Revenue Code, 26 U. S. C. 61, defines gross income in all inclusionary terms as "all income

from whatever source derived," and then described or illustrates some types of income. There are of course some sources of money that do not constitute income when received, such as return of capital, gifts and loans. The Government does not contend now and did not contend below that loans are income taxable to the borrower when received.

The court in *Davis v. United States, supra,* when discussing this very point, said:

> "Appellant makes much of the fact that the government has not fixed a label of some kind on the funds that he took from his corporation. It is not necessary to describe them as additional salary, illicit bonuses, or commissions, or anything more than wrongful diversions, since, as above mentioned, substance controls over form, and taxation is concerned with the actual command over the property taxed."

To the same effect see: *Dawkins v. Commissioner of Internal Revenue,* 238 F. 2d 174 (8 Cir. 1956).

In other words, the Government has to prove that a taxpayer had unreported income in a certain amount and not that a taxpayer had unreported income obtained by fraud and unreported income obtained by extortion and unreported income obtained by larceny and so on. Appellant's position during the trial was not that he obtained these funds by embezzling them as distinguished from obtaining these funds by swindling people, but rather that he obtained these funds as the result of bona fide loans, and appellant in his brief still takes the same position. Appellant does not cite a single case in support of his position that the jury should have been instructed on the elements of state crimes (Argument V A).

Appellant in specification 10 claims it was error not to instruct as to the elements constituting embezzlement (No. 75), and mentions it briefly in Argument V A; however, appellant in Argument V B admits that the court did instruct the jury as to the elements constituting embezzlement. Appellant is correct the second time; the court instructed quite fully on the elements of embezzlement, and pointed out while so doing that neither party contended nor argued that any of the specific items were acquired by embezzlement [R. T. 7991-7992].

Appellant in his Argument V B claims that there is still doubt in this Circuit as to whether or not receipts obtained by fraud or misrepresentation constitute reportable income, and, therefore, the instruction given as to income (as set forth in appellant's brief) was error. Appellant then goes a step further in Argument VI, and claims that since there is still doubt as to the taxability of ill-gotten gains, appellant could not have known that receipts so obtained were taxable income and hence he could not have acted wilfully. This argument is frivolous.

The United States Supreme Court in 1952 decided the case of *Rutkin v. United States,* 343 U. S. 130, wherein, at page 137, it said:

> "An unlawful gain, as well as a lawful one, constitutes taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it. Burnet v. Wells, 289 U. S. 670, 678; Corliss v. Bowers, 281 U. S. 376, 378. That occurs when cash, as here, is delivered by its owner to the taxpayer in a manner which allows the recipient freedom to dispose of it at will, even though it may

have been obtained by fraud and his freedom to use it may be assailable by someone with a better title to it."

This is not dictum, and is the same rationale the Supreme Court used in *James v. United States,* 366 U. S. 1 (1961). Every Court of Appeals that has considered this area of the law has arrived at the same basic conclusion.

Wyss v. United States, 239 F. 2d 658 (7 Cir. 1957);

Davis v. United States, supra;

Bruswitz v. United States, 219 F. 2d 59 (2 Cir. 1954), cert. denied 349 U. S. 913 (1955);

Briggs v. United States, 214 F. 2d 699 (4 Cir. 1954), cert. denied 348 U. S. 864 (1954);

Marienfeld v. United States, 214 F. 2d 632 (8 Cir. 1954), cert. denied 348 U. S. 865 (1954);

Kann v. Commissioner of Internal Revenue, 210 F. 2d 247 (3 Cir. 1953), cert. denied 347 U. S. 967 (1954);

Akers v. Scofield, 167 F. 2d 718 (5 Cir. 1948), cert. denied 335 U. S. 823 (1948).

Appellant, in setting out the trial court's instruction on income, does not do justice to the court in that the entire instruction on the point is not set out. The court instructed as follows:

"Income, as that term is used in the federal income tax laws, does not include all money and property that may come into the ownership or possession of a taxpayer or be applied to his use and benefit in a given tax year. Certain of such items of money or property are not taxed under the federal tax laws and therefore are designated 'non-

taxable.' I will now define for you what constitutes taxable income and, in so doing, I will also enumerate, as far as pertinent in this case, those receipts which are nontaxable. This definition is of basic importance in the case and I suggest you follow the definitions clearly.

"The federal income tax is levied on the net gains, profit and income, of whatever kind and in whatever form paid, derived from wages, salaries or compensation for personal services, or from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal; also, from interest, rent, dividends, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

"The tax is imposed on gains or income whether acquired in a lawful or in an unlawful manner. That the taxpayer's mode of receipt may be illegal, or that his freedom to dispose of a gain may be assailable by someone with a better title to it, has no bearing on whether the gain is income under the tax laws. The law is that financial or monetary gain to a taxpayer, whether lawfully or unlawfully acquired, unless by embezzlement, constitutes taxable income to the taxpayer in the year when the taxpayer has such control over it that, as a practical matter, he derives readily realizable economic value from it."

* * * * *

"As previously stated, not all money or property received by a taxpayer is taxable income within the meaning of the tax laws. The law provides that certain receipts of property or money do not constitute taxable gain or income within the meaning of the tax laws, and hence are nontaxable re-

ceipts. Insofar as pertinent to this case, nontaxable receipts may be defined to include: the proceeds of bona fide loans and gifts, and money or property which represents a return of capital. In this case the only nontaxable receipts claimed to have been received by the defendant in the indictment years and not credited to him by the Government in its computations presented in evidence are sums which defendant claims he borrowed from others.

* * * * *

"On the other hand (1) funds not received as loans or gifts, or as any other nontaxable receipt as previously defined, but which (2) are actually received, or applied or caused to be applied, by a taxpayer to his personal economic use or benefit, are taxable income to the taxpayer (3) in the year in which as a practical matter he derives readily realizable economic value from them, and must be reported as such in tax returns by the taxpayer. If each and all of the three factors just referred to are proven beyond a reasonable doubt as to particular funds, it is immaterial whether the receipt or application of such funds by the taxpayer be lawful or unlawful, with the exception of embezzled funds. That exception will be explained in a few minutes.

"Basically then, when a taxpayer acquires funds, either lawfully or unlawfully, under a claim of right, without recognition by mutual consent of both payor and payee of the funds, express or implied, of an obligation to repay the funds and without restriction as to their disposition, he has received income which he is required to report in his tax returns as income in the year received. This is true even though it might be claimed that

> the taxpayer is not entitled to retain the money, and even though he might be liable to make restitution thereof."

Appellant cites *James v. United States,* 366 U. S. 213 (1961) in support of his claim that willfullness could not be proven in the instant case because the law was uncertain and unstated as to whether or not funds obtained by false pretenses were taxable income at the time the alleged crime was committed. The invalidity of this paraphrase of the quotation from the *James* case is easily demonstrated by reviewing the status and development of the tax law relating to embezzled funds.

In 1946 the United States Supreme Court decided that embezzled funds did not constitute taxable income. *Commissioner v. Wilcox,* 327 U. S. 404 (1946).

Six years later the same Court held that money obtained by extortion did constitute taxable income, and in the decision the Court specifically limited *Wilcox* to its facts; *Rutkin v. United States,* 343 U. S. 130 (1952). From 1952 on, the law was that "an unlawful gain, as well as a lawful one, constitutes taxable income . . ." (*supra*), and the courts of appeal so ruled as they applied this doctrine from *Rutkin.* There was no uncertainty in this area, and the law was clearly stated. If there was any uncertainty in the area of the taxability of any ill-gotten gains, it was strictly limited to the taxability of embezzled funds, and this was because and only because the *Wilcox* case had not been specifically overruled by *Rutkin.* This uncertain status did not exist as to any other type of ill-gotten gains than embezzlement, because there was no other case like *Wilcox;* hence, the law since 1952 was clear, certain and settled that ill-gotten gains from false pretenses, larceny by trick, fraud and misrepresentation, and swindle constitute taxable income.

It is clear that the *James* case does not support appellant's claim. In fact, the quote relied on by appellant comes from one of the five opinions filed in the case, and just three justices support it. Another justice disagrees with it and would affirm the conviction because:

> ". . . in my view the proof shows conclusively that petitioner, in willfully failing to correctly report his income, placed no bona fide reliance on Wilcox" (p. 241).

Two other justices also disagree and would remand for a new trial to give the trier of fact the opportunity to take into account whether or not *James* relied on *Wilcox,* and said:

> ". . . if the trier of fact, properly instructed finds that the petitioner did not act in bona fide reliance on Wilcox, but deliberately refused to report income and pay taxes thereon knowing of his obligation to do so and not relying on any exception in the circumstances, I do not see why even the strictest definition of the element of 'willfullness' would not have been satisfied" (p. 245).

The other three justices, in two more opinions, do not specifically treat the problem.

Factually, appellant was convicted of three counts of tax evasion; and his case was affirmed by this Court in 1953 (201 F. 2d 386). Appellant knew that ill-gotten gains were taxable, just as he knew that bona fide loans were not taxable; in fact, it is patently clear in the record below that appellant knowingly and intentionally arranged his financial affairs to make them appear as if they were loans (see testimony of Liz Renay, Samuel Chilkov, and Louis Wald [R. T. 5923-5935; 6413-6601; 3167-3234]).

Appellant not only did not contend that he relied on the uncertain and unsettled status of law regarding taxability of ill-gotten gains from fraud or swindle, but he specifically denies that these funds were obtained from fraud or swindle, and claims that the money involved was loaned to him. Such a stand, in the face of the overwhelming evidence of swindling, is alone sufficient to indicate that he knew that swindled money was taxable. The *James* case was decided several weeks after the trial below commenced, and both parties relied on it in support of various positions, during the trial.

Finally, looking quickly at the instrinsic value of these requested instructions that were not given, it appears that many of them are unintelliglble, ambiguous, and would only confuse and confound the trier of fact. In this regard, appellant also offered instructions numbered 64 through 73 which cover general California criminal law; these were given in substance but not as California criminal law; appellant does not claim that this treatment of these instructions was error. There appear to be some slight discrepancies in the language of some of the instructions, Nos. 63, and 74 through 80, as they are printed in the brief compared to the conformed copies that were served upon appellee during trial, *e.g.*, compare No. 63 as it is in the brief with 63 as it is in the Clerk's Transcript at 479.

6. The Verdict of Guilty as to Counts Two and Three Was Supported by Substantial Evidence and Was Not Contrary to the Weight of Evidence.

In appellant's Argument IX A he blandly challenges the sufficiency of the evidence as to Counts Two and Three of the Indictment without setting forth a statement of the evidence. In fact, he goes even further, and states that the number and complexity of the transactions proven by the prosecution preclude a detailed

treatment of this testimony. Who has the burden of proof at this stage of the case?

Appellee suggests that this Court adopt the conclusions of some of the state courts and find as they did.

In *Hickson v. Thielman,* 147 Cal. App. 2d 11, 304 P. 2d 122 (1956), the court said (p. 125):

> "The reporter's transcript in the instant case contains 246 pages of testimony. The matter occupied the court below for several days. Appellants have made no attempt to make a fair statement, or, indeed, anything approaching a fair statement of the evidence claimed to be insufficient. Their failure to do so will be deemed tantamount to a concession that the evidence supports the findings."

In *McCosker v. McCosker,* 122 Cal. App. 2d 498, 265 P. 2d 21 (1954), the court said (p. 22):

> "Although the reporter's transcript consists of 340 pages, appellants make no reference whatever to said testimony. The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. Kruckow v. Lesser, 111 Cal. App. 2d 198, 200, 244 P. 2d 19. It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings. The reviewing court is not called upon to make an independent search of the record where this rule is ignored."

In *Goldring v. Goldring,* 94 Cal. App. 2d 643, 211 P. 2d 342 (1949), the court said (pp. 343-344):

> "It is incumbent upon the appellant to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings. The reports are replete with statements to the effect that the courts are not called upon to make an independent search of the record where the rule is ignored. . . . But we do now give notice that henceforth it will be the practice of this court to disregard claims of insufficiency of the evidence even though that be the only ground of appeal, where the appellant has failed to make a satisfactory statement in the opening brief, or a supplement thereto, of the evidence claimed to be insufficient, with transcript references. Counsel who ignore the rule may expect affirmance of the judgment or order appealed from in proper cases."

See also:

Smithpeter v. Wabash RR., 360 Mo. 835, 231 S. W. 2d 135 (1950);

Sazear v. Pendergrass, 39 Ariz. 111, 4 P. 2d 386, 388 (1931);

Peters v. Wallace, 127 Okla. 182, 260 Pac. 42, 43 (1927);

State v. Johnson, 39 Idaho 440, 227 Pac. 1052 (1924).

Appellant decides that Counts Two and Three succeed or fail on the life story receipts; he does not say why he so decides; whereas, appellee concurs that Count Three involves only life story receipts; Count Two involves substantially more than just life story receipts (*supra*).

Appellee has not, would not, and shall not ask this Court to decide a case upon hypothetically contrived

facts, and appellee urges this Court to disregard appellant's hypothetical description of a life story transaction. Appellee shall not attempt to rebut appellant's hypothetical transaction other than to point out that it is not supported by the evidence. It is, of course, impossible to factually support a contended for result with non-existent facts. Appellant's ability and adroitness in drawing a conclusion from an unsupported hypothetical, and then claiming that any finding to the contrary is not supported by substantial evidence is interesting but not very persuasive.

Appellant continues by saying that each of the witnesses called by the prosecution (some 190 witnesses were called by the prosecution) testified that, in turning money over to appellant, they were loaning it to him and at all times they considered it to be a loan. In support of this generality appellant gives three citations to the transcript: the first is to Ruth Fisher Benson's testimony, but the prosecution did not charge her life story payments to appellant as income; the second is Charles Schneider's testimony, who, on the page cited, testified that the $2,500.00 life story transaction that he had with appellant he intended as a loan just as he said on the back of his $2,500.00 check which reads "Loan made to [appellant] for future deal on motion picture of the life story of [appellant]" [R. T. 827]; and the third is to Dr. Leonard Krause's testimony, who on the page cited doesn't even use the word loan.

As proof for appellant's next claim that these transactions, life story receipts, were loans and were so considered by the parties involved, he gives five transcript citations to show numerous occasions of repayment: the first citation is to the testimony of Jordan Friedman who was repaid $1,000.00 by appellant after appellant had received $2,500.00 from Friedman, but appellant was not charged with obtaining "life story

income" from Friedman; the second citation is to the testimony of Attorney George Bieber who was repaid some of the money he transferred to appellant and he still has $21,500.00 coming, but Bieber's life story transactions were not charged to appellant as income; the third citation is to the testimony of Billy Gray who is not involved with life story receipts but did get repaid some $66,000.00 because he was holding appellant's jewelry; the fourth citation is to the testimony of Abe Phillips who had numerous cash transactions with appellant, but Phillips is not involved with life story receipts; the fifth citation is to the testimony of appellant's Attorney Jack A. Dahlstrum who testified that appellant handed him $2,500.00 which he sent to Sam Pomeranz to repay a loan in like amount that Pomeranz made to appellant but through Dahlstrum.

Thus, it has now been demonstrated that not one of his five citations to the transcript support appellant's claim that the life story receipts were loans and not income, as not one of the witnesses referred to was a transferor of funds to appellant on a life story transaction that the prosecution charged was income to appellant.

Appellant next claims a loan is characterized as such at the time the transaction is entered into, and failure to repay it does not change its characterization; no authorities are cited to support this precept. The court's instruction on loans is quite informative, helpful, and legally correct [R. T. 7988-7990].

In *People v. Ashley,* 42 Cal. 2d 246, 267 P. 2d 271 (1954); cert. den. 348 U. S. 900, there is an extensive discussion of the problem of proving intent when the issue involves determining whether money turned over to another was a loan or obtaining property by larceny by trick and devise or by false pretenses. In many

ways the facts herein are comparable to the facts in the instant case.

In *People v. Krupnick,* 165 Cal. App. 2d 755, 332 P. 2d 720 (1958), the defendant was convicted of grand theft even though he claimed he was getting loans.

In *People v. Safka,* 174 Cal. App. 2d 312, 344 P. 2d 619 (1959), the court said:

> "It is well settled that a loan of money induced by a fraud representation that it will be used for a specific purpose accompanied by an intent to steal amounts to larceny by trick and device."

Also see:

> *People v. Reinschreiber,* 152 Cal. App. 2d 750, 313 P. 2d 890 (1957).

These California cases, and there are many more of like import, are offered as being illustrative of the proposition that what at first appears to be a loan transaction may, when all the facts are known, really be criminal activity; and the proceeds so derived would be taxable as ill-gotten gains. See: *Rollinger v. United States,* 208 F. 2d 109 (8 Cir. 1953), where the court, following the reasoning of *Rutkin,* held that money obtained through fraudulent representations and swindling constituted taxable income.

Appellant states, "Nowhere throughout this entire transcript has the validity of the life story agreements as binding and legal documents been challenged by the prosecution" (Appellant's Brief, p. 53). In view of the statement of facts set out above, this patently erroneous generality of appellant's does not warrant much attention. What life story contracts is appellant referring to? The contract between Guttman and appellant? Appellee does not challenge the validity of that life story contract. And flowing from that contract there is only

one conclusion that can be drawn: appellant, after he signed it, had no right, title, or interest to or in his own life story.

Appellant was extremely careful in that he did not tell a single transferor of money to him based upon his life story about Guttman or that there were any others like them. This is the typical situation of concealing and covering up of a material fact that one in appellant's position was legally bound to disclose. What are the holders of these life story contracts and promissory notes supposed to get? The contract says a percentage of appellant's residuals (whatever that term actually means, and note appellant is the only one able to determine what it would mean). Mathematically, what percentage of appellant's residuals would Bishop get? And how much money would have to be put into appellant's residuals in order to repay Bishop his original $7,500.00?

Appellant says there was ample testimony that great quantities of money could have been realized from appellant's life story if its full potential had been realized. It appears that this statement would be true about almost anyone's life story; however, appellant cites Hecht, Seide, and Himself as support for this contention. Appellee asks why the full potential was not realized, and, if the full potential were realized, who legally gets what?

Appellant concludes by noting that once these funds were loaned to appellant he was free to dispose of them as he wished. Appellee disputes this as to some particular transactions, but as to others appellee concurs and points out that he could also have used these funds to pay something on his assessed taxes as charged in Count Four.

7. **The Trial Court Did Not Err in Refusing to Give Appellant's Requested Instructions Nos. 37, 49, and 56 Pertaining to Lesser Included Offenses, Because They Are Legally Inaccurate.**

Appellant's specification 17 and argument VII claims it was error not to instruct the jury with respect to lesser included offenses. Appellant's entire argument is really not an argument, but rather a statement of a contention that 26 U. S. C. 7203 and 7207 are lesser included offenses in 26 U. S. C. 7201. Appellant, in his argument, merely sets forth what he determined were the pertinent parts of sections 7203 and 7207.

Appellee has already noted that appellant failed to comply with this Court's Rule 18 by neglecting to set forth these three instructions, Nos. 37, 49 and 56, *totidem verbis* (*supra,* V. C. 1). Appellant complied with this part of the rule as to his other instructions. Appellee, relying on the set of instructions acquired during the trial, will set forth these three instructions.

Appellant's requested instruction No. 37:

> "The crime of willfully attempting to evade or defeat a tax, which is defined in §7201 of the Internal Revenue [26 U. S. C. A. §7201] previously read to you, necessarily includes the lesser offense of willful failure to pay the tax, and the lesser offense of willful failure to supply information for the purposes of the computation, assessment or collection of any income tax imposed by law, both of which lesser offenses are defined in §7203 of the Internal Revenue Code [26 U. S. C. A. (I.R.C. 1954) §7203], as follows:
>
> > "'Any person required * * * [by law] to pay and * * * tax, or required * * * [by law] to * * * keep any records, or supply any information, [for the purposes of the

computation, assessment,] who willfully fails to pay such * * * tax, * * * [or] keep such records, or supply such information, at the time or times required by law * * *.'

shall be punished as the law provides.

"As previously stated, the law permits the jury to find a defendant guilty of any lesser offense which is necessarily included in the crime charged, whenever such a course is consistent with the facts found from the evidence and with the law as given in the instructions of the court."

Appellant's requested instruction No. 49:

"The crime of willfully attempting to evade or defeat a tax, which is defined in §7206(4) of the Internal Revenue Code [26 U.S.C.A. §7206(4) previously read to you, necessarily includes the lesser offense of willful failure to pay the tax, and the lesser offense of willful failure to supply information for the purposes of the computation, assessment or collection of any income tax imposed by law, both of which lesser offenses are defined in §7203 of the Internal Revenue Code [26 U.S.C.A. (I.R.C. 1954) §7203], as follows:" (The rest is the same as No. 37 above.)

Appellant's requested instruction No. 56:

"The crime of willfully attempting to evade or defeat a tax, which is defined in §§7201 and 7206(4) of the Internal Revenue Code [26 U.S.C.A. §§7201 and 7206(4)] previously read to you, necessarily includes the lesser offense of willful failure to supply information for the purposes of the computation, assessment or collection of any income tax imposed by law, both of which lesser offenses are defined in §7203 of the Internal

Revenue Code [26 U.S.C.A. (I.R.C. 1954) §7203] as follows:" (The rest is the same as No. 37 above.)

These three instructions basically say: (No. 37) that 26 U. S. C. 7203 is a lesser included offense in 26 U. S. C. 7201; (No. 49) that 22 U. S. C. 7203 is a lesser included offense in 26 U. S. C. 7206(4); and (No. 56) that 26 U. S. C. 7203 is a lesser included offense in both 26 U. S. C. 7201 and 7206(4).

Appellant, in his brief, did not directly say that he requested an instruction that 26 U. S. C. 7207 is a lesser included offense in 26 U. S. C. 7201, but he so infers. In any event, it is now clear that whether section 7207 is or is not a lesser included offense in section 7201 is not before this.

Appellant in his brief does not argue that section 7203 is a lesser included offense in section 7206(4), and a mere reading of the two statutes explains why.

Thus, instructions No. 49 and 56 were not given, should not have been given, and appellant here does not argue that they should have been given.

This brings us to instruction No. 37, and it is unintelligible, ambiguous, and inherently inaccurate, in that it does not quote section 7203 properly. The words: "for the purposes of the computation, assessment, or collection of any income tax imposed by law" which appear in the requested instruction do not appear in 26 U. S. C. 7203. The instruction as it is could not be given as there is no such crime as the one described in this instruction.

Even were we to assume that there was a proper requested instruction to the effect that section 7203 is a lesser included offense in section 7201, the results would be the same; namely, section 7203 does not define any crimes that are lesser included offenses in the crimes described in section 7201.

Inasmuch as appellant did not see fit to cite a single case in support of his position, appellee shall merely cite the controlling cases without taking this court's time to belabor the point.

Achilli v. United States, 353 U. S. 373 (1957);

United States v. Berra, 351 U. S. 131 (1956);

Spies v. United States, 317 U. S. 492 (1942);

United States v. Foley, 290 F. 2d 562 (8th Cir. 1961);

United States v. Lee, 238 F. 2d 341 (9th Cir. 1956);

United States v. Moran, 236 F. 2d 361 (2d Cir. 1956);

United States v. Hoover, 233 F. 2d 870 (3rd Cir. 1956);

Dillon v. United States, 218 F. 2d 97 (8th Cir. 1955), cert. den. 349 U. S. 914, dism. 350 U. S. 906;

United States v. Yuncker, 147 Fed. Supp. 97 (S. D. Ind. 1956).

D. It Was Not Error for the Trial Court to Admit the Testimony Pertaining to Religious Activities, Matters and Beliefs of Appellant Because Such Testimony Was Relevant and Material to Issues in the Case.

Appellant's specification 3 and argument VIII claim it was error to admit certain testimony of James A. Vaus, Jr., and W. C. Jones wherein religious activities of appellant were discussed.

We saw above that this Court's Rule 18 requires that, "When the error alleged is to the admission . . . of evidence, the specification shall quote the grounds urged at the trial for the objection and the full substance of the evidence admitted . . . and refer to the page number . . . where the same may be found." Appellant sets forth the testimony of Vaus and then the testimony of Jones that he specifies was erroneously admitted; then appellant says that this testimony was allowed into evidence in spite of the *prior* protests of counsel and counsel's willingness to stipulate to the transfers of money between the parties.

The record shows that there was not one objection to Vaus' testimony about appellant's religious affairs [R. T. 686-737; 780-783]. So there was no *prior* protest to this testimony. There were objections made to Jones' testimony about appellant's religious affairs [R. T. 762, 770-772].

Appellant obtained substantial amounts of money from the evangelists: Vaus, Jones and Blythe, and the religious matters, beliefs, and activities of appellant, whether sincere or put-on, were inextricably involved in these financial transactions. Appellant does not assign Blythe's testimony on religious activities as error.

Appellant told Skelton that he had received $15,000 for sitting in the audience at Madison Square Garden

for Billy Graham, and that if he had been converted to Christianity he would have received $25,000.00 [R. T. 3474-3475]. Appellant also told Jennings that the Billy Graham organization had promised him $15,000.00 to turn Christian publicly; that he did go to Madison Square Garden and was paid $10,000.00; and that he had an offer from the Billy Graham organization to go on a national tour that would net him about $50,000.00 a year [R. T. 5731-5734]. Appellant also told Jennings that with the exception of Blythe, he didn't consider he owed the evangelists anything; they had been using him for their own purposes and he therefore felt he didn't owe them anything [R. T. 5734].

The evangelists denied that appellant had ever been paid or that there had ever been any offer of payment to appellant for a public conversion [R. T. 734]. Appellant testified that he did not know if Jones tried to promote him, but he did not promote Jones [R. T. 7418-7419].

Appellant interjected religion throughout his financial manipulations. Compare and contrast the following situations: appellant and the evangelists; appellant and Krause at a Jewish religious ceremony [R. T. 1290-1292]; appellant's explanation of his affiliation with the greenhouse that he made to collection officers [Ex. 587]; appellant and Hecht raising money for Israel, and appellant's possession of the Bible and silver box containing dirt from Israel [R. T. 7144-7148; 7414-7415].

Appellant quoted his trial counsel's objection (if it is in fact an objection) which was made at the side-bar, and immediately following this the court cautioned, as

distinguished from ruled, "Don't go into too much detail with it. Let's shorten down the detail." Government counsel then said:

> "I will, except there is one area that is going to be gone into even more particularly on it, your Honor, because the government is prepared to show that (appellant) was involved in a confidence game to obtain money from these people and the money so obtained is income" [R. T. 762].

After Vaus and Jones testified, appellant moved to strike their testimony; the government opposed the motion; the court denied the motion; and at the time of this ruling the government's position was stated [R. T. 805-809].

Nowhere in the trial record is there any discussion or reference or value judgment made as to comparative religion; no religion was compared or contrasted with any other religion; and religion was in no way utilized as a criterion or standard for credibility.

Appellant was shown to be a confidence man who secured money from others by various devices and misrepresentations and religion was just one of them. Judge Boldt at the time of sentencing observed:

> "The fact that (appellant) ingratiated himself into at least a speaking acquaintance with a number of prominent and respectable people and that he used them and their names in effecting his frauds does not minimize his misconduct in which neither religion, patriotism or friendship, nor human kindness, sorrow or fear were excepted by (appellant) as a means toward his unprincipled ends" [R. T. 8090].

E. The Requirements of Law That Appellant Receive Notice of the Deficiency Were Complied With.

1. The Mailing of the Notice of Deficiency Was in Compliance With the Statutory Requirements.

Appellee has set forth the details and background factors leading up to the mailing, by registered mail of notices of deficiencies to appellant and to appellant and his wife.

The issue that appellant raises here is whether or not the notices of deficiency were mailed to appellant's "last known address." If they were mailed to appellant's last known address, then under the terms of the statute this "shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability. . . ." 26 U. S. C. 272 (K), 1939 Code.

On August 9, 1951, notices of deficiency were sent to appellant and to appellant and his wife by registered mail addressed to 513 Moreno Avenue, Los Angeles, California. Was this appellant's "last known address" at that time, as that phrase is legally interpreted?

Appellee contends that appellant's last known address on August 9, 1951, was 513 Moreno Avenue, Los Angeles, California. Appellant contends that appellant's last known address on August 9, 1951, was Los Angeles County Jail, Los Angeles, California.

Maxfield v. United States, 153 F. 2d 325 (9th Cir., 1946), said:

> "The last known address becomes a matter of proof in each case where the question arises." (p. 326).

The following cases deal with the issue of how to apply "last known address" to the facts involved while keeping in mind the purpose of notices of deficiencies and the practical necessities dictated by the volume of the underlying subject matter: collecting taxes.

Tenzer v. Commissioner, 285 F. 2d 956 (9th Cir. 1960);

Pfeffer v. Commissioner, 272 F. 2d 383 (2d Cir. 1959);

Williams v. United States, 264 F. 2d 227 (6th Cir. 1959);

Boren v. Riddell, 241 F. 2d 670 (9th Cir. 1957);

Gregory v. United States, 57 Fed. Supp. 962.

On August 9, 1951, the following facts were evident: (1) Appellant was in the county jail; (2) Appellant had been sentenced to serve five years in the custody of the Attorney General; (3) Appellant had elected not to serve his sentence until his pending appeal was decided; (4) Between July 13, 1951, and August 9, 1951, appellant had at least two hearings before Chief Judge William Denman, U. S. Court of Appeals for the Ninth Circuit, on appellant's petition for bail pending appeal and as of August 9, 1951, there was no decision from Judge Denman (191 F. 2d 300, and this Court's own file on this matter); (5) Appellant was married since 1940 and with his wife had been living for three years at 513 Moreno Avenue, Los Angeles; (6) Appellant's wife was still living at 513 Moreno Avenue; (7) The Commissioner knew the above facts.

Appellant cites *Barack v. United States* (D. C. E. D. Mo., 1956); 56-2 USTC. para. 9961, as authority for his contention; but in that case, which is not bind-

ing on this Court, the taxpayer was *serving* his sentence in a federal penitentiary, and the letter went to his sister's home.

The fact that appellant had elected not to serve his sentence is quite significant. Rule 38(a)(2) Federal Rules of Criminal Procedure permits this election. By this election, appellant has some control over how long he may remain in the County Jail, for until either the appeal is terminated or the appellant changes his election, which he can do at any time, he can not be transferred to the penitentiary to commence serving his sentence (18 U. S. C. 3568); but he could have been transferred at any time to another similar type of institution. The Attorney General has the authority to designate the places of confinement where the sentence shall be served, but until the service of the sentence commences the prisoner is not sent to a penitentiary. 18 U. S. C. 4082, 4083, 4086. Thus at any time during the period we are concerned with, appellant could have changed his election, and would have been transferred to a penitentiary.

2. The Law Does Not Require the Government to Give Personal Notice of a Deficiency, and in Any Event the Evidence Shows That Appellant Had Personal Knowledge of the Deficiency.

Appellant first contends that the deficiency letters did not go to his "last known address," and then he contends that personal notice is necessary. The same statute that directs notices are to be mailed to last known addresses provides that if this is done it is sufficient. 26 U. S. C. 272(K), 1939 Code.

Due process does not require personal notice in every situation, and the above-quoted statute and the cases interpreting it (cited above) do not require it. However, the facts in this case compel the conclusion that

appellant know of the deficiencies and the deficiency letters. The letters were sent by rgistered mail and were not returned to the sender; someone of course, signed for them (it was not appellant); and one of the letters was addressed to both appellant and his wife. This Court said in *Boren v. Riddell* (*supra*):

> "We presume the purpose of using registered mail is *first,* to provide the safest economical method of insuring that in the greater majority of cases, notice is actually received by the taxpayer from his Government; *second,* to create some commonly accepted factual basis to permit, in good conscience, the initiation of the ninety day period against the taxpayer, without requiring the Government to face the almost impossible task of *proving* actual notice to the taxpayer."

Appellant's wife visited appellant in the county jail; warrants of distraint were issued on July 13, 1951 [Ex. 846]; thirteen notices of tax liens were filed on the same date; and in September of 1951 appellant's Cadillac was seized pursuant to warrant of levy and a warrant of distraint. And this activity was taking place while appellant was well represented by attorneys at law.

26 U. S. C. 272(d) (1939 Code of Internal Revenue) provides:

> "(d) Waiver of restrictions. The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency."

Appellant and his wife, in the presence and office of their attorney, on August 17, 1956, signed waivers [Ex. 848].

F. Appellant Was Not Placed in Double Jeopardy.

1. 26 U. S. C. 7201 Defines More Than One Offense.

The facts of appellant's prior conviction in 1951 are set forth by appellee above. Briefly, appellant was convicted on June 20, 1951, of three counts of wilfully attempting to evade and defeat income taxes for the years 1946, 1947 and 1948 in violation of 26 U. S. C. 145(b) 1939 Code, and one count of false statement to a government agency in violation of 18 U. S. C. 1001.

26 U. S. C. 7201 provides:

> "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution."

One offense described here is that of willfully attempting to evade and defeat income taxes, the other offense described here is that of willfully attempting to evade and defeat the payment of taxes, and these are separate offenses.

United States v. Mollet, 290 F. 2d 273 (2nd Cir. 1961);

Wilson v. United States, 250 F. 2d 312 (9th Cir. 1958); rehear. den. 254 F. 2d 391 (9th Cir. 1958); new trial granted 264 F. 2d 74 (9th Cir. 1959);

Bardin v. United States, 224 F. 2d 225 (7th Cir. 1955); cert. den. 350 U. S. 380; rehear. den. 350 U. S. 919.

See also:

Lawn v. United States, 355 U. S. 339, 361 (1958).

2. Appellant Was Not Prosecuted Twice on the Same Facts or Transactions.

Let us assume that 26 U. S. C. 7201 defines just one crime: the attempt to evade and defeat taxes, would appellant's conviction in 1951 bar his conviction here? Clearly, no. The crime he was charged with (in each of the three counts) was that he attempted to evade and defeat taxes by the affirmative act of filing a false and fictitious tax return on a date certain sometime prior to 1951. In this case the affirmative acts charged in the indictment do not include any of the acts charged in the old count.

This becomes clear when we use another statutory crime. Assume that on June 20, 1951, a man attempted to rob a bank, and he was arrested, tried and convicted for this offense; and then assume that 10 years later he again attempts to rob the same bank and was caught. Would this second prosecution be barred? Obviously, not. And this is basically what is present in the instant case.

G. The Verdict of Guilty as to Counts Five, Eight, Nine and Ten Was Supported by Substantial Evidence and Was Not Contrary to the Weight of Evidence.

Appellant's argument IX B claims that the verdict on Counts Five, Eight, Nine and Ten was not supported by substantial evidence. What we have said above in our argument V.C.6 also applies here.

Appellant concludes that the entire transcript is devoid of testimony that would in any way show an ownership interest of appellant in the Cadillacs in Counts Five and Eight. The statement of facts as set forth by appellee answers this contention. The evidence as to the way each of the Cadillacs was secured,

financed, insured, paid for, traded in on another one, and possessed, repaired, and maintained is the proof of appellant's ownership interest in the vehicles. Appellant's own trial accountant disagrees at least in part with appellant's argument, and he was put on the stand by appellant as an expert witness (*supra*).

Appellant claims there was no evidence that he had any ownership interest in the 12.69 carat diamond ring, but rather that he was a bailee, and as authority appellant cites his own testimony. It appears from appellant's testimony that: in 1948 Tiny Naylor, a sick, wealthy, big-time gambler who owned a stable of horses but didn't like to be seen going to the window to bet, owed gambling debts to his bookmaker, Bones Remmer, who was laying-off money with appellant who had a commission office; Remmer asked appellant to collect for him from Naylor, and Naylor from his sick bed told appellant he was losing money gambling and couldn't pay Remmer at the moment, but gave appellant the ring to give to Remmer; appellant told Remmer that he had the ring and Remmer told appellant to keep it in his possession and when Naylor paid his debts appellant could return the ring to Naylor. Naylor died before trial [R. T. 7095-7100, 7342].

Twelve years later, appellant still had the ring; his wife wore it for several years; he placed it with Henchel for some five years; he placed it with Gray for at least a year; and he had it pawned. Did appellant have an ownership interest in ring? The jury said he did.

Appellant does not argue that he did not have an ownership interest in the jewelry involved in Count Ten, other than to infer that, like the ring, when appellant gave it to his wife it was a gift and when his wife handed it back to appellant it was a loan. If we pursue this reasoning and show that appellant had the jewelry,

including the ring, for a specific purpose, and when the purpose was fulfilled that he regained these items and told his wife he didn't have them, what are the legal rights of the parties? And to go one step further, what happens when she divorces him and he has these items but she doesn't know it?

Appellant does not contest the value of the 12.69 carat diamond ring in Count Nine, but does question the value of the jewelry in Count Ten; the evidence shows that the diamond ring was one of the items of jewelry in Count Ten (*supra*).

H. Appellant Was Properly Convicted of Violating 18 U. S. C. 1001.

Appellant contends that a false oral denial does not constitute a statement within the meaning of 18 U. S. C. 1001.

Is that what we have here—a false oral denial? Doesn't the evidence show that appellant did more than just deny an interrogatory? His actual answers to basically the same questions were: "No, sir."; "That is absolutely correct,"; "Not one nickel"; "No, sir"; and "None whatsoever . . ." Doesn't the evidence also show that there was more than just an oral statement? Before the questioning began, appellant was told that the questions and answers would be taken down by a stenographer, who was present in the room; and that he would have an opportunity to see a copy of the transcript; the stenographer took down the questions and answers; a transcript was made; appellant was given a copy of the transcript; and appellant in a letter written to the questioner said that the transcript was correct. Of course, appellant was speaking as contrasted to writing at the time of the conference; but under all the circumstances just elucidated there was far

more than just an oral "no", in fact since appellant was under oath it almost amounts to an affidavit.

Appellant does not concede the falsity of the "denial"; but appellee in the statement of fact set forth the proof of the falsity rather than merely contending that there was none.

Appellant quotes from a number of cases in order to support his position that the statute was intended to be restricted to written statements.

In the case of *United States v. Gilliland,* 312 U. S. 86 (1941), the court was discussing 18 U. S. C. 35, the statute out of which 18 U. S. C. 1001 evolved, and had a written false statement fact situation. The point that appellant seeks to make was not under consideration in the case.

United States v. Phillippe, 173 Fed Supp. 582 (D. C. N. Y. 1959), is distinguishable in that the statement there was not under oath, and was not reduced to a transcript which was subsequently ratified. But even were it not distinguishable, it is not binding on this court, and appellee respectfully submits that it is erroneous.

United States v. Levin, 133 F. Supp. 88 (D. C. Colo. 1953), and *United States v. Davey,* 155 F. Supp. 175 (D. C. S. D. N. Y. 1957), both support appellant's claim, and both are distinguishable on their facts from the instant case. Here, appellant was summoned for the conference; he was allowed to bring technical assistance, which he did, his Certified Public Accountant was with him and advised him; he was given a full explanation of the procedures before they began the interview; he was advised that he would be placed under oath, which he was; he was given the constitutional warning about self-incrimination. The agency involved was the Collection Division of the Internal Revenue Service.

There is a recent case in this Court that appears to answer appellant's contention.

Cooper v. United States, 282 F. 2d 527 (9th Cir. 1960). In this case the defendant in response to a question put to him by Internal Revenue agents denied, orally, that he had never received money from prostitution; he was convicted under 18 U. S. C. 1001 and this was upheld.

In *Brandow v. United States,* 268 F. 2d 559 (9th Cir. 1959), this court said:

> "Regardless of any alleged factual differences, however, we decline to follow the reasoning of *U. S. v. Levin, supra,* or *U. S. v. Stark,* D. C. D. Md. 1955, 13 F. Supp. 190, neither of which is binding on this Court"

See also:

DeCasaus v. United States, 250 F. 2d 150 (9th Cir. 1957);

Knowles v. United States, 224 F. 2d 168 (10th Cir. 1955);

Cohen v. United States, 201 F. 2d 386 (9th Cir. 1953).

I. The Court Did Not Err in Denying Appellant's Motions for Mistrial.

1. Appellant Was Not Denied His Right to Counsel Because His Attorney Was a Government Witness.

The Government put Mr. Pomeranz on the stand on May 18, 1961, and he testified about a $2,500.00 transaction he had with appellant through Jack A. Dahlstrum in 1958, wherein Pomeranz's check was made payable to Dahlstrum but its proceeds went to appellant. Pomeranz received a $2,500.00 promissory note from Dahlstrum. [R. T. 2627-2651; Ex. 561.] Pomeranz

was eventually repaid by a money order purchased by Dahlstrum with appellant's money.

While Pomeranz was still on the witness stand, Dahlstrum requested a side bar conference as follows:

"Mr. Dahlstrum: May we approach the bench?
The Court: Certainly.

(The following proceedings were had between court and counsel at the bench outside the hearing of the jury):

Mr. Dahlstrum: We are now in that area I was afraid we might get into. This is the one financial transaction with which I had anything to do whatsoever, and I made a loan of this to Mr. Cohen, which is all in the government records. I don't see how I can keep from taking the stand. This is not the fact as he—

The Court: If you do you will have the privilege of doing that, provided you don't argue the matter in argument.

Mr. Sheridan: I was going to say on that line, I would have to put Mr. Dahlstrum on the stand myself because the records will show, and Mr. Dahlstrum's check shows, how this was handled.

The Court: I can do nothing more about it than I have already done.

Mr. Sheridan: Your check went to Cohen, there is no question about that.

Mr. Dahlstrum: That is right."

On Friday, June 9, 1961, toward the end of the afternoon court session the Government requested a side-bar conference and the following colloquy took place.

"(The following proceedings were had between court and counsel at the bench outside the hearing of the jury):

Mr. Sheridan: For the first time in six weeks I end without any witnesses. My anticipation was that Mr. Jennings was going to take a lot longer than he did.

The Court: Do you have anybody you can use to take up the rest of the time?

Mr. Sheridan: The only one I can think of is my friend who is standing next to me, Mr. Dahlstrum. It might take me a few minutes to get his file. I don't know if I have it here or not, and I just wanted to look through it first.

The Court: And he might want to read the statement too.

Mr. Sheridan: Do you want to have an attorney here?

Mr. Dahlstrum: The only thing I will say is this, your Honor, I would like to be ordered to answer because I hate to lose the privilege of arguing on any points, even those on which I may be examined on, and I think if I was ordered to answer under the circumstances, if your Honor is so inclined, that I have the privilege to argue the case in its entirety rather than have to bow out of some three or four little points.

The Court: I don't want to anticipate this, but I suspect that I would permit you to speak of this subject but not to argue your own credibility.

Mr. Dahlstrum: I won't argue credibility.

The Court: If any issue of that kind is involved or the bona fides of the transaction or anything of that kind, but I can't judge what it is because I don't know anything about what it is. I will order you, though, I will do it now and I will command you to respond, and if that helps the situation from your point of view I have no hesitancy in doing it at all.

Mr. Dahlstrum: I didn't want to lose the privilege of arguing any portion of the case.

Mr. Sheridan: When you say 'argue' are you referring to the closing argument?

Mr. Dahlstrum: Yes.

Mr. Sheridan: No problem there.

One thing further, how do you wish to handle the cross-examination of yourself?

Mr. Dahlstrum: I will just speak where I think it is necessary. I will just speak and you can object if I do something you think is out of line.

The Court: All right.

Mr. Sheridan: I might need a minute or two to check my files." [R. T. 5895-5896.]

Mr. Dahlstrum was then called as a witness, was sworn, and testified. His entire testimony is covered in 13 pages. [R. T. 5898-5911.] Dahlstrum never objected as such to taking the stand.

On Monday, June 12, 1961, before court began there was a conference in Judge Boldt's chambers, outside of the jury's hearing; the following transpired.

"Mr. Dahlstrum: Secondly, if the court will recall, I was concerned when I was subpoenaed about being precluded from arguing the case or any portion of it, and—

The Court: I don't see any occasion on the basis of the testimony given, Mr. Dahlstrum, to be concerned about it at all.

Mr. Dahlstrum: We talked about it, you will recall.

The Court: Yes.

Do you, Mr. Sheridan?

Mr. Sheridan: I don't know what phase of the argument or what he is talking about.

Mr. Dahlstrum: It occurred to me that now my credibility is at issue and I wonder if I can effectively argue the case, my credibility having been put in issue as a witness in the case now.

The Court: I don't think there is any problem to it at all. You have carte blanche to argue on the basis of the evidence as fully as you would wish, as if it hadn't come out from you at all.

Mr. Dahlstrum: Well, the only thing, as I say, concerning my testimony is that my credibility is in issue and if I stand up and start arguing the case whether it has been put in issue, my having been subpoenaed as a witness. It seems to me that it is.

On reflection over the weekend, and consequently to protect the record, I think I better move for a mistrial, since that has been done, that I was subpoenaed as a witness—I was not subpoenaed, excuse me—because I was called as a witness and ordered to answer and now I am worried about the effect of my credibility, having been put in issue in the case, as it affects the whole position of me as counsel for the defendant in the matter with the jury, and I would move the court for a mistrial on it. It concerns me greatly.

Mr. Sheridan: Let me say, if I may, this much, that Mr. Dahlstrum of course knew long before he took the defense of the case that he was going to be a witness in this case. I personally told him long before he was to be the sole trial counsel for the defense, that he was a witness in the case. We talked at some length prior to the trial about stipulating to his testimony one way or another, and it did not work out that we ended up stipulating to his testimony, but it is not an eleventh hour situation, is the opinion I am trying to convey.

Mr. Dahlstrum was called before the grand jury, he testified of course before the grand jury, we have an affidavit from Mr. Dahlstrum that whatever the date is on the affidavit that is now an exhibit in the court, and he knew from the basis of the affidavit and his grand jury testimony and conversations with myself that he would be a witness in the case. This was of course prior to picking up the defense of the case.

Mr. Dahlstrum: Let me say this, I knew I gave an affidavit, certainly; I knew I was called before the grand jury, certainly; but I have been in this case since the date of the indictment, September of 1960, in one phase or another of it. I did not know that I was going to be sole trial counsel, true, nor did I know for sure in September of 1960 that I was going to be a witness.

Frankly, the relevancy of my testimony is a question in my mind alone, yes, and that was it. But to say I knew I was going to be a witness until you told me after the indictment and during the course of our conversations, you will be a witness, is more the fact of it, is that not right?

Mr. Sheridan: Yes. Without a doubt I did not tell you definitely you were going to be a witness in the trial until after the indictment came out because we had no issue until the indictment was framed. He was indicted September 16, 1960. I wouldn't by any stretch of the imagination even know the exact date that we talked, but we talked about it on a number of occasions during the pre-trial conferences.

The Court: Well, I must say that I have presumed that you were going to be called as a witness from the beginning of the trial because in the list of exhibits you are listed as a witness and the exhibit numbers are given to certain exhibits. I didn't think anything about it but I noticed it, and I assumed that sometime or other you were going to be called as a witness.

So however that may be, I have not the slightest concern about the situation that you indicate and therefore deny the motion and allow an exception. I think in my judgment there is not the remotest possibility of any difficulty arising on account of it, and I now make it plain that whatever reservations there might have been previously expressed concerning your arguing this phase of the case, I see no reason why you shouldn't argue it just as fully as you may wish and without reservation provided, or course, you remain within the record." [R. T. 5917-5920.]

From the foregoing, it appears that: (1) Dahlstrum knew far in advance of trial that he would be a witness called by the Government; (2) Dahlstrum, of his own volition advised the court that in view of Pomeranz's testimony he (Dahlstrum) would have to place him-

self on the witness stand whether or not called by the Government; (3) Prior to actually calling Dahlstrum to the stand, the Government prosecutor privately advised Dahlstrum and the court he would put Dahlstrum on the stand at that time; and (4) Dahlstrum was asked if he wanted another attorney present while he was on the stand, and he declined.

In view of these factors, appellant's claim must fail. It should also be pointed out that Dahlstrum was personally mentioned by other witnesses, both before and after he testified:

See:

Testimony of Feigenbaum at
[R. T. 1565-1576];

Testimony of Pomeranz at
[R. T. 2635-2651];

Testimony of Bieber at
[R. T. 2116; 2121; 2151];

Testimony of Lebby at
[R. T. 3237-3239];

Testimony of Brody at
[R. T. 4130; 4145; 4149-4151; 4181]; and

Testimony of Jennings at
[R. T. 5710; 5716].

Neither side in fact argued Dahlstrum's testimony during their closing arguments or at any other time during the trial.

Also, during the trial some twenty attorneys at law were called as witnesses for the Government, and they testified, just as Dahlstrum did, about their financial transactions with appellant.

It appears to appellee that from the quoted portions above that appellant's motion for mistrial and his argument here fall into the category of "invited error," and we urge this court to do as the trial court, politely decline the invitation.

The case of *People v. Lathom,* 192 A. C. A. 239 (1961), is distinguishable and wholly inapplicable to this case.

2. The Court Did Not Err in Denying Appellant's Motions for Mistrial Based on Newspaper Publicity.

The test as to whether or not a mistrial should be granted on the grounds of newspaper publicity is whether or not it had any impact upon the minds of the jurors that was prejudicial to appellant; and this is a matter that rests within the sound discretion of the trial judge.

Yates v. United States, 225 F. 2d 146 (9th Cir. 1955);

Marshall v. United States, 360 U. S. 310 (1959);

United States v. Postma, 242 F. 2d 488 (2d Cir. 1957);

Jolly v. United States, 232 F. 2d 83 (5th Cir. 1956);

United States v. Penna, 229 F. 2d 216 (7th Cir. 1956);

Briggs v. United States, 221 F. 2d 636 (6th Cir. 1955);

Cohen v. United States, 201 F. 2d 386 (9th Cir. 1953).

At the start of trial in the instant case the Court at some length admonished the jury about reading communications of any kind, including newspapers. Thereafter, during the course of the trial, which lasted some 42 days, the Court renewed the admonition at least sixty-nine times.

After the return of the verdict the Court specifically asked the jurors whether they had seen or read any written or published item in any way referring to appellant or the case between the time the case was submitted to the jury and the return of the verdict. Not one juror had seen such material [R. T. 8067-8068].

The Court then went on to say:

> "I take it then from the fact that none of you rise or make it known that each of you individually, on your oath as a juror and as a citizen of the United States, now informs the Court and affirms as a fact that he or she has not seen any published or written item of any nature relating to the defendant or to this case other than the exhibits in the case. Is that correct? Do you also affirm?
>
> (Assent.)
>
> Let the record show this, please."

This inquiry of the judge was also supported by the careful questioning by Judge Boldt of the bailiff prior to the return of the verdict, and it shows not only didn't the jury read or see the material but that it was impossible for them to have seen it under the circumstances.

Thus, there is no showing that the jury read the publications or that the jury was in any way prejudiced by any publicity of any kind. Furthermore, there is no showing of an abuse of judicial discretion in this matter.

VI.
CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment and sentence of the Court should be affirmed.

Dated: Los Angeles, California, October 28, 1961.

FRANCIS C. WHELAN,
United States Attorney,

THOMAS R. SHERIDAN,
Assistant United States Attorney,
Chief, Criminal Division.

Attorneys for Appellee.

APPENDIX.

APPENDIX EXHIBIT 1

Summary of Life Story Transactions.

Source	Total Amount Paid	Amount of Contract	Contract Percent	Date of First Payment	Date of Last Payment
Ruth Fisher	$ 7,537.27	$ 7,500.00	5%	1-17-56	9-8-58
George Bieber	10,500.00	10,500.00	5%	1-11-57	4-23-57
Charles Schneider	2,500.00	*	*	4-10-57	4-10-57
Aubrey Stemler	10,000.00	10,000.00	10%	4-23-57	5-31-57
Bernard Koomer	15,000.00	15,000.00	10%	5-6-57	7-24-57
Leonard Krause, M.D.	25,000.00	25,000.00	10%	11-4-57	3-11-58
Louis Leitner	9,750.00	35,000.00	10%	1-20-58	4-9-58
Max Feigenbaum	18,950.00	25,000.00	10%	1-20-58	6-23-58
Joseph Bishop	7,500.00	7,500.00	2%	4-6-58	8-21-58
	$106,737.27	$135,500.00			

Contracts offered by Appellant but not accepted:

Louis Fortwangler	$15,000.00	3%
Virginia Stark	30,000.00	8%

*No written agreement provided by Appellant.

APPENDIX EXHIBIT 2

Life Story Transactions—Ruth Fisher—5%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations On Checks	Endorsements
91	1-17-56	1-17-56	500.00	Harmon Eldridge	(Michael Cohen)	Loan to M/C	(Note from MC to Eldridge)
92	8- -57	8- -57	500.00	Ruth Fisher	(Michael Cohen)	Cash Advance	(Cash given MC by R. Fisher)
93	9- 3-57	9- 6-57	2500.00	" "	Michael Mickey Cohen	Loan on future agreement concerning Mickey Cohen story	Michael Mickey Cohen
95	4-21-58	4-21-58	2000.00	" "	Michael Cohen	Loan to Michael (Mickey) Cohen on future deal on motion picture prod.	Michael Cohen
97	5- 7-58	5-13-58	1000.00	" "	Michael (Mickey) Cohen	Loan to Michael (Mickey) Cohen on future deal on motion picture prod.	Michael Mickey Cohen
102	9- 8-58	10-8-58	1037.27	Bernard Kaufman*	Ruth Fisher	For interest in Mickey picture & book etc.	Ruth Fisher/Mickey Cohen
		Total	$7537.27				
100	3- 5-58	Notarized (5-16-58)	(7500.00)	Michael Mickey Cohen to Ruth L. Fisher—Prom. Note.			
101	3- 5-58	Notarized 5-16-58	(7500.00)	Michael Mickey Cohen to Ruth L. Fisher—Life Story Contract 5%.			

*Appellant had other financial transactions with Fisher.

APPENDIX EXHIBIT 3

Life Story Transactions—George Bieber—5%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations	Endorsements
414	1-11-57	1-21-57	7500.00	George Bieber	Michael's Greenhouse	"Loan"	Michaels Greenhouses, Inc. Michael Cohen J. S. Bernstein
415	4-23-57	4-29-57	3000.00	George Bieber	Michaels Greenhouse, Inc.	None	Michaels Greenhouses, Inc., by Lillian Weiner
		Total	$10500.00				
430	2- 3-58		$10500.00	Michael Mickey Cohen to: Bieber—Promissory Note.			
		Notarized					
431	2- 3-58	2-11-58	10500.00	Michael Mickey Cohen to: Bieber—Life Story Contract.			

*Appellant had other financial transactions with Bieber.

APPENDIX EXHIBIT 4

Life Story Transactions—Charles Schneider—% Unknown.

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations On Checks	Endorsements
272	4-10-57	4-22-57	$2500.00	Charles Schneider	Michael Cohen	"Loan made to Michael Mickey Cohen for future deal on Motion Picture of the life story of Michael Cohen"	Michael Cohen
		Total	$2500.00				

*No promissory note or contract given.

**Appellant had other financial transactions with Schneider.

APPENDIX EXHIBIT 5

Life Story Transactions—Aubrey Stemler—10%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations	Endorsements
239	4-23-57	5- 3-57	3000.00	Aubrey Stemler	Michael Cohen	Loan—Michael Cohen Motion Picture Enterprise	Michael Cohen/Ellis Mandel/ Rush Currency Exchange, Inc.
240	5- 7-57	5- 9-57	2000.00	Aubrey Stemler	Michael Cohen	Loan Michael Cohen c/o Motion Picture Enterprise. Total investment to date—$5000.00	
241	5-15-57	5-24-57	2500.00	Aubrey Stemler	Michael Cohen	Payment on A/C 10% interest in Mickey Cohen Motion Picture Production	Michael Cohen
242	5-15-57	5-28-57	2500.00	Aubrey Stemler	Michael Cohen	Balance due on purchase of 10% interest in Mickey Cohen motion picture	Michael Cohen/Billy Gray for deposit in Billy Gray and Shirley Gray building fund
		Total	$10000.00				
251	5-31-57	—	10000.00	Letter contract from Michael Mickey Cohen to Mr. Aubrey Stemler—10% interest in life story.			

*Appellant had other financial transactions with Stemler.

APPENDIX EXHIBIT 6

Life Story Transactions—Bernard Koomer—10%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations On Checks	Endorsements
319	5- 6-57	5-24-57	7500.00	Bernard Koomer	Michael Cohen	Advance on 15000 loan to Michael Cohen for 10% of Future Story and Motion Picture Rights to the Mickey Cohen Story	Michael Cohen
320	7-24-57	7-25-57	7500.00	Bernard Koomer	Michael Choen	Final payment for 10% for all rights to the Mickey Choen story	Michael Choen
		Total	$15000.00				
325	3-31-58	Notarized 3-31-58	15000.00	By Michael Mickey Cohen—10% Life Story Contract.			
326	May 1957 ~~March 1958~~	Notarized 4- 1-58	15000.00	By Michael Mickey Cohen to Marie and Happy Koomer—Promissory Note.			

*Appellant had other financial transactions with Koomer.

APPENDIX EXHIBIT 7

Life Story Transactions—Leonard Krause, M.D.—10%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations on Checks	Endorsements
327	11-4-57	11-11-57	$1500.00	Sadelle Bellows	Michael Cohen	Advance loan on Future Motion Picture Story	Michael Cohen
328	11-13-57	11-15-57	1500.00	Sadelle Bellows	Michael Cohen	Loan on Future Motion Picture Story	Michael Cohen
338	11-13-57	11-21-57	2000.00	David Krause	Michael Cohen	Loan on Future Motion Picture Story	Michael Cohen Jules Salkin
329	1- 3-58	1- 9-58	1500.00	Sadelle Bellows	Michael Cohen	Loan to Michael M. Cohen on Future Motion picture production	Michael Cohen Hotel Riviera Las Vegas, Nevada
339	1- 8-58	1-10-58	1000.00	David Krause	Michael Cohen	Loan on Future motion picture story	Michael Cohen Billy Gray
340	1-10-58	1-15-58	500.00	David Krause	Michael Cohen	Loan on motion picture story	Michael Cohen Ben Blue
330	1-18-58	2-11-58	5000.00	Sadelle Bellows	Michael Cohen	Personal loan on future M. Cohen story	Michael Mickey Cohen Michael Cohen
341	2-12-58	2-14-58	4000.00	Leonard Krause	Cash		Billy Gray
342	2-12-58	2-13-58	3000.00	Leonard Krause	Cash		Billy Gray
343	3-10-58	3-10-58	1400.00	Leonard Krause	David Krause		David Krause—pay to the order of M. Cohen for loan on picture story Michael Cohen Billy Gray
344	3-10-58	3-11-58	3600.00	Leonard Krause	David Krause		David Krause—Pay to order of M. Cohen for loan on picture story
		Total	$25000.00				
357	2- 3-58		10000.00	Michael Mickey Cohen	David Krause—Promissory note		
358	2- 3-58		15000.00	Michael Mickey Cohen	Sadelle Bellows—Promissory note		
359	2- 3-58)	Notarized 2-11-58		"Life Story" Agreement—Cohen and Bellows			
360	2- 3-58)			"Life Story" Agreement—Cohen and David Krause			

*Appellant had other financial transactions with Krause.

APPENDIX EXHIBIT 8

Life Story Transactions—Louis Leitner—10%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations	Endorsements
370	1-20-58	1-29-58	1500.00	Louis Leitner	Michael "Micky" Cohen	As a personal loan	Michael Mickey Cohen
371	1-28-58	1-29-58	2000.00	Louis Leitner	Michael "Micky" Cohen	Loan to Michael "Micky" Cohen on future deals on motion picture "The Micky Cohen Story"	Michael Mickey Cohen
372	2- 7-58	2- 3-58	2000.00	Louis Leitner	Michael "Micky" Cohen	Loan to Michael "Micky" Cohen on future deals on motion picture "The Micky Cohen Story"	Michael Mickey Cohen - - - Cashed - - - George R. Bieber
373	1-29-58	2- 3-58	500.00	Louis Leitner	Michael "Micky" Cohen	Personal Loan	Michael Mickey Cohen - - - Cashed - - - George R. Bieber
374	1-29-58	2- 3-58	750.00	Louis Leitner	Michael "Micky" Cohen	Personal Loan AX 39361	Michael Mickey Cohen - - - Cashed - - - George R. Bieber
375	4- 4-58	4- 3-58	1500.00	Louis Leitner	Michael "Micky" Cohen	Loan to Michael Cohen on future deals on motion pictures The Micky Cohen Story	Michael Mickey Cohen Edward I. Gritz 139 No. Bdway MA 69167 Michael Mickey Cohen
376	4- 9-58	4- 9-58	1500.00	Louis Leitner	Michael "Micky" Cohen	Personal loan to Michael Micky Cohen on future motion picture deal The Micky Cohen Story	Michael Mickey Cohen Carousel Ice Cream Parlor—George Weiner
		Total (Notarized)	$9750.00				
380	2- 3-58	2-11-58 Life Story Contract—35000					
379	2- 3-58	2-11-58 Life Story Note—35000					

APPENDIX EXHIBIT 9

Life Story Transactions—Max Feigenbaum—10%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations	Endorsements
	1-20-58	1-20-58	1000.00	Mike Kasino	Currency to M. Cohen		
383	1-21-58	1-22-58	5000.00	Trans World Attractions	Cash		M. Cohen
73	1-21-58	1-22-58	5000.00	Mike Kasino	Mike Kasino		Mike Kasino/M. Cohen
385	1-28-58	1-29-58	1000.00	Trans World Attractions			M. Cohen
386	3-31-58	4- 2-58	2200.00	Mike Kasino	Cash		Michael Cohen
	3-31-58	3-31-58	300.00	Mike Kasino	Currency to M. Cohen		
77	4-28-58	5-13-58	2450.00 (1000.00)	Michael Cohen Max Feigenbaum	M. Cohen (W.U.M.O.)** (Cash to Feigenbaum)		M. Cohen/Jack Begun
397	6-23-58	6-24-58	3000.00		Michael Cohen (C/C)***		Michael Cohen/Alan Weiner
		Total	$18950.00		Loan		
		Notarized					
396	3- 7-58	3- 7-58	25000.00	Life Story Contract to Max Feigenbaum—10%			

*Appellant had other financial transactions with Feigenbaum.

**Western Union Money Order.

***Cashier's Check.

APPENDIX EXHIBIT 10

Life Story Transactions—Joseph E. Bishop—2%

Trial Exhibit No.	Date On Check Negotiated		Amount	Source	Payee	Notations	Endorsements
362	4- 6-58	4- 8-58	$800.00	Joseph Bishop	Micky Cohen	Personal loan to Micky Cohen	Micky Cohen
363	5-26-58	5-27-58	6000.00	Joseph Bishop	Lillian Weiner	Loan—Guaranteed by Michael Cohen	Lillian Weiner/Carousel Ice Cream Parlor
364	6- 2-58	6- 3-58	250.00*	Joseph Bishop	Cash		Merry Go Round-Ben Blue's
365	6-15-58	6-17-58	350.00*	Joseph Bishop	Cash		(blank)
366	8-21-58	8-22-58	600.00*	Joseph Bishop	Ben Blue's		(stamp) Ben Blue's
			$7500.00				
368	9-17-58	(no notary)	7500.00	Life Story Contract—2% Signed Michael Cohen			
367	9-17-58	(" ")	7500.00	Promissory Note by Michael Cohen to Joseph E. Bishop			

*Out of three checks totalling $1200.00, Bishop retained $500.00.

APPENDIX EXHIBIT 11

Summary of Cadillacs

Date Purchased	Purchase Price	Financing & Insurance Charges	Total Time Price	Financing Agency	Cash on Delivery	Vehicle Traded in & Trade Allowance	Total Payments on Contracts	Total Payments on Vehicle	Registration
				(1) 1956 Coupe DeVille					
10-11-56	$ 5,450.00	$ 805.60	$ 6,255.60	Pac. States Inv. Co.	$1,800.00	——— ———	$ 566.48	$ 2,366.48	Michael's Greenhouses, Inc.
				Count 5					
				(2) 1957 El Dorado Seville		#(1) '56 Cad-Deville			
1-30-57	8,585.74	687.30	9,273.04	Pac. States Inv. Co.	1,500.00	Allowance $4,700.00 Less: Pay off 3,340.96 Net Allowance $1,359.04	4,939.75	6,439.75	Michael's Greenhouses Inc.
				Count 6					
				(3) 1957 Cadillac El Dorado					
9-18-57	13,875.48	2,346.76	16,222.24	Brougham G.M.A.C.	—0—	#(2) '57 Cad-Seville Allowance 6,000.00 Less: Pay off 2,056.64 Net Allowance 3,943.36	10,131.64	10,131.64	George or Lillian Weiner
				Count 7					
				(4) 1959 El Dorado Biarritz					
3-11-59	9,116.46	933.23	10,049.69	G.M.A.C.	3,500.00	#(3) '57 Cad-Brougham Allowance 6,216.46 Pay off 6,882.67 Negative Allowance $(606.21)	2,623.53	6,123.53	Lillian Weiner
				Count 8					
				(5) 1960 El Dorado Seville					
2-2-60	8,571.66	1,806.00		May Finance Co.	790.34	——— ———	1,551.10	2,341.44	Lillie Weiner